87-1289

No. _____

IN THE

Supreme Court of the United States

JOSEPH R. MCMAHON

Petitioner

v.

FRANKLIN MINT COMPANY

On Appeal from the United States Court of Appeals
for the Third Circuit, No. 87-1298

PETITION FOR A WRIT OF CERTIORARI

Keith S. Erbstein, Esq.
BEASLEY, CASEY, COLLERAN, ERBSTEIN,
THISTLE, KLINE & MURPHY
5th Floor
21 S. 12th Street
Phila., PA 19107
(215) 665-1000

Attorney for Petitioner

PACKARD PRESS / LEGAL DIVISION, 10th & SPRING GARDEN STREETS, PHILA., PA. 19123 (215) 236-2000

QUESTIONS PRESENTED

I. Whether E.R.I.S.A. requires that a welfare benefit plan expressly provide for continued welfare benefits in order for a permanently, totally disabled employee to continue his entitlement to such benefits?

II. Whether, absent express language permitting a change in welfare benefits, an E.R.I.S.A. employer is free to change welfare benefits of an employee who is totally, permanently disabled?

III. Whether a person on long-term disability is entitled to continued coverage under the welfare benefit plan in effect at the time he became disabled, when the language of the plan is ambiguous and there is ample evidence that the parties intended the welfare benefits to vest?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—*(Continued)*

CERTIFICATE OF SERVICE

I, Keith Erbstein Esquire, hereby certify that on February 3, 1988, the counsel listed below was served by First Class Mail, Postage Prepaid with true and correct copies of the plaintiff's Petition for A Writ of Certiorari to The Supreme Court of the United States.

Keith Erbstein, Esquire

JEROME HOFFMAN, ESQUIRE
DECHERT PRICE & RHOADS
3400 Centre Square West
1500 Market Street
Philadelphia, PA 19102

No.

IN THE

Supreme Court of the United States

JOSEPH R. MCMAHON

Petitioner

v.

FRANKLIN MINT COMPANY

On Appeal from the United States Court of Appeals for the Third Circuit, No. 87-1298

PETITION FOR A WRIT OF CERTIORARI

LOWER COURT OPINIONS

An opinion was renderd by the United States District Court for the Eastern District of Pennsylvania in this matter on April 28, 1987, granting summary judgment for defendant. (NO. 86-7353). The United States Court of Appeals for the Third Circuit affirmed the judgment of the District Court in an opinion rendered on November 5, 1987. (No. 87-1298).

JURISDICTION

Review of the judgment of the United States Court of Appeals for the Third Circuit entered on November 5, 1987, is sought. Statutory authority for review on writ of certiorari is conferred by U.S. Sup. Ct. Rule 17(1)(a) & (c), 28 U.S.C.A. The decision rendered by the Third Circuit Court of Appeals in this

case conflicts with a decision rendered by the Sixth Circuit Court of Appeals on the same matter. This case involves an important question of federal law which has not been, but should be considered by this Court. Although the present case involves only one permanently, totally disabled petitioner, the E.R.I.S.A. issue is one which affects all retired as well as permanently disabled employees.

STATUTE

The statute which this case involves is The Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, et. seq. the pertinent text of which is set forth in the Appendix.

STATEMENT OF THE CASE

Plaintiff was first employed by defendant in 1970. On September 3, 1978, plaintiff was injured in a non-work related swimming pool accident, which resulted in quadraplegia and other related illnesses. (App. 60A) At the time of plaintiff's accident, defendant had in force a comprehensive benefits program which provided significant health and dental care benefits. The Major Medical portion of the plan called for payment of 80 percent of the charges after first applying a $75.00 deductible. Major Medical benefits provided coverage under the plan for private duty professional nursing services when provided by a registered graduate nurse other than a close relative and when a physician certified that the services were necessary. (App. 92A)

Since the time of his discharge from a rehabilitation center, plaintiff has been certified by a physician to require "at home" professional nursing services, and until January 1, 1984, defendant paid 80 percent of these charges after applying the annual $75.00 deductible. (App. 2A)

As of January 1, 1984, in an effort by defendant to implement cost containing measures in the benefits program, the nursing care benefits were drastically reduced. These changes reduced plaintiff's nursing care benefits to 30 days per year at 80

percent and 30 days per year at 50 percent. (App. 2A) At the same time, the deductible for Major Medical expenses increased to $150.00.

At the time of his accident, plaintiff was an active employee of defendant and was a member of Teamster Local 312. Shortly after his accident, plaintiff resigned from the union. He was on short-term disability for six months and has since then been on long-term disability.

The employee benefit plan provides that during a long-term disability the coverage ". . . will continue as if active employment was continuing." (App. 82A) Coverage for active employees "begins when an employee completes the waiting period, continues during employment and for the 31 days following an effective date of termination." (App. 88A) Since plaintiff has not been terminated, he is still eligible for coverage under the aforementioned provisions.

Additional provisions for long-term disability in the employee benefit plan state that:

> ". . .[A]fter two years, benefits *will continue* (emphasis added) only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fit . . . no benefits under this plan *will continue* (emphasis added) beyond your 65th birthday month." (App. 119A)

Mr. McMahon is completely unable to engage in any and every gainful occupation and he is not yet 65 years of age. Thus, he has met the conditions for continued coverage under the long-term disability provisions. The language of the plan demonstrates an intent to provide continued coverage and there is no indication that long-term disability benefits are subject to change.

Plaintiff contends that neither his employer nor his former union have a contractual right to change plaintiff's benefits. Plaintiff has earned these benefits through eight yeas of employment. As a permanently disabled employee, plaintiff's status is no different than that of a retired employee who is entitled to the benefits in effect on the date of his retirement, unless there is expressed language permitting the change.

Plaintiff originally filed suit in the Court of Common Pleas of Delaware County, Pennsylvania, for Major Medical Health Care Benefits. The suit was timely removed by defendant to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. Sec. 1441(b). Federal question jurisdiction is estblished by virtue of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Sec. 1001, *et seq*.

The matter was considered in the District Court on stipulations of fact (App. 60A-61A) and cross-motions for summary judgment. On April 28, 1987, the Court entered summary judgment for defendant, from which plaintiff appealed to the United States Court of Appeals for the Third Circuit. Jurisdiction over the appeal from the final judgment of the District Court was conferred by 28 U.S.C. Sec. 1291.

The District Court premised its opinion with the pronouncement that:

> ". . . the ony way plaintiff can contend that his nursing benefits vested upon the onset of his disability is if the plan *expressly* so provides." (Emphasis added.) (App. 8A)

The Court of Appeals affirmed this view on November 5, 1987.

ARGUMENT

I. Whether ERISA requires that a welfare benefit plan expressly provide for continued welfare benefits in order for a permanently, totally disabled employee to continue his entitlement to such benefits?

The Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. Sec. 1001 et seq. distinguishes between a "welfare plan" 29 U.S.C. Sec. 1002(1), which provides medical, surgical or hospital care, or benefits in the event of sickness, accident, disability, death or unemployment, and a "pension plan" 29 U.S.C. Sec. 1002(2) which provides retirement income to employees or results in a deferral of income for periods extending to the termination of covered employment or beyond.

Pension plans must meet participation, vesting and accrual requirements of ERISA, based on age and length of service under 29 U.S.C. Sec. 1051-1061, while welfare plans are not required to do so.

ERISA provides a broad exemption clause 29 U.S.C. Sec. 1144(a) negating almost all common law causes of action involving employee benefit plans, which has led to the conclusion that ERISA provides a virtually exclusive remedy for employees. *Pilot Life Insurance Co. v. Dedeaux*, ____U.S. ____, 107 S.Ct. 1549 (1987); *Metropolitan Life v. Taylor*, ____U.S. ____, 107 S. Ct. 1542 (1987).

In absence of specific statutory provisions, Federal Courts are directed to fashion a body of common law appropriate to the enforcement of the Act and consistent with justice. *Scott v. Gulf Oil Corp.*, 754 F.2d 1499 (9th Cir. 1985), *Menhorn v. Firestone Tire and Rubber Co.*, 738 F.2d 1496 (9th Cir. 1984). However, examination of the existing body of common law reveals a conflict among the Federal Courts of Appeal regarding the vesting of employee welfare benefits.

While the vesting of employee welfare benefits is unprotected by ERISA itself, such benefits have been found to vest in the absence of explicit language. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F.2d 1476, 1482 (6th Cir. 1983) *cert. denied* 465 U.S. 1007, 104 S.Ct. 1002 (1984). Contrary to *Yard-Man*, the Third Circuit, in affirming the District Court, in this case required an express provision for the vesting of welfare benefits.

The language of the District Court opinion that ". . . the only (App 8A) way plaintiff can contend that his nursing benefits vested upon the onset of his disability is if the plan expressly so provides", clearly puts the burden of finding express vesting language on the employee. This is patently contrary to *Yard-Man*, supra, which placed the risk of ambiguity on the employer.

Yard-Man involved the interpretation of a collective bargaining agreement. It has been stipulated in this case that the original health care plan was a bargained for condition of

employment. Thus, either the collective bargaining agreement or the benefit plan itself will contain any provision for the vesting of welfare benefits. Since there is no collective bargaining agreement before the Court, we look to the plan only.

In *Yard-Man*, there was no express provision to the effect that the welfare benefits would vest, but the Court found an ambiguity in the language dealing with the duration of coverage. As a result, the Court looked to the intent of the parties in interpreting the agreement. *Yard-Man* concluded that the:

> ". . . finding of an intent to create interminable rights to retiree insurance benefits, in the absence of explicit language, is not in any discernable way inconsistent with Federal Labor Law."

Yard-Man, supra at p.1482 citing *Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S.Ct. 383, 398 (1971). Although *Yard-Man* involved a retiree and the present case involves a totally disabled employee, there is every reason to believe that as far as the developing Federal common law is concerned, Mr. Mahon is no different than a person who is retired.

In this case, as in *Yard-Man*, there is no express vesting language in the plan. However, the Court must go on to determine whether the durational provisions are ambiguous. It is submitted that had the Court below engaged in the analysis set forth in *Yard-Man*, it would have found an ambiguity as to the duration of welfare benefits for persons on long-term disability. From there it would have proceeded to ascertain that the intent of the parties supported plaintiff's contention that the benefits vested as of the date of plaintiff's disability.

II. Whether, absent express language permitting a change in welfare benefits, an E.R.I.S.A. employer is free to change welfare benefits of an employee who is totally, permanently disabled?

Defendant contends that it has retained the right to change the benefit plan by the following language: "The plan is subject to review and revision by Franklin Mint Co." (App. 86A)

However, such language falls far short of the definitive, unambiguous right to change benefits for retirees that is required by *Yard-Man*, supra and *In re White Farm Equipment Co. v. White Motor Corp.*, 788 F.2d 1186 (6th Cir. 1986). In *White Farm*, the standard of proof established by the Court required that the evidence "unambiguously establish the scope of a termination clause". *White Farm*, supra at p.1193.

Clearly, if the defendant intended to retain a right to change the coverage for disabled employees, it knew how to do so in unambiguous language. This is demonstrated by the language defendant used in dealing with the retirement plan. There defendant stated in no uncertain terms that it ". . . reserves the right to amend or cancel the Plan (Retirement Plan) at its discretion." (App. 132A)

It is unclear what was intended by defendant when it used the word "revision". According to the *Webster New Collegiate Dictionary*, 1973 Ed., p.984, "revise" is derived from the Latin term "revisere" which means "to look at again". The term "revise" is defined as "1: to look over again in order to correct or improve [a manuscript] 2a: to make a new, amended, improved, or up-to-date version of [a dictionary]."

In construing collective bargaining agreements for welfare benefits, courts are permitted to draw inferences *Policy v. Powell Pressed Steel*, 770 F.2d 609. It is apparent from the definitions set forth above that the term "revision" carried with it an inference of upgrading or improving. There is nothing to suggest that "revision" carries an inference of terminating or decreasing.

The Court of Appeals in this case found that defendant retained the right to change the coverage in unambiguous language when defendant provided that the plan was "subject to review and revision". However, plaintiff submits that in light of the uncertainty surrounding the meaning of "revision" as it is used in the plan, it cannot be found that defendant unambiguously retained the right to change the plan.

As is the case with retiree benefits, disability benefits for employees already on long-term disability are not a mandatory

subject of collective bargaining. The active employees have no incentive whatsoever to bargain for the benefits of those who are no longer actively employed. It is unlikely that such benefits would be left to the contingencies of future negotiations. Clearly, both parties intended these benefits to continue with coverage remaining as it was on the date of disability.

III. Whether a person on long-term disability is entitled to continued coverage under the welfare benefit plan in effect at the time he became disabled, when the language of the plan is ambiguous and there is ample evidence that the parties intended the welfare benefits to vest?

The enforcement and interpretation of collective bargaining agreements is governed by federal substantive law according to the Labor Management Relations Act, 1947, §301, 29 U.S.C.A. §185. However, traditional rules of contract interpretation are applied to collective bargaining agreements so long as their application is consistent with federal labor policies. *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457, 77 S.Ct. 912, 918 (1957); *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir. 1983) *Cert. denied* 465 U.S. 1007, 104 S.Ct. 1002 (1984). Although the Court has before it only the employee benefit plan, it has been stipulated that the original benefit plan was a bargained for condition of employment. (App. 78A)

The Court in *Yard-Man* looked just to the explicit language of the agreement for a clear manifestation of intent, but cautioned that "the intended meaning of even the most explicit language can, of course, only be understood in light of the context which gave rise to its inclusion." *Yard-Man*, supra, at p.1479. The Court further directed that construction of each provision of the collective bargaining agreement should be consistent with the entire document. *Yard-Man*, supra at p. 1479.

In interpreting the collective bargaining agreement in *Yard-man*, the Court found the key provision to be ambiguous.

The language at issue in *Yard-Man*, supra at p.1480 ". . . will provide insurance benefits equal to the active group benefits . . ." bears a remarkable similarity to the langugage of the benefit plan in this case, ". . . medical and dental plan coverage will continue as if active employment was continuing." (App. 82A) The *Yard-Man* Court found that the language ". . . could reasonably be construed, if read in isolation, as either solely a reference to the nature of retiree benefits or as an incorporation of some durational limitation as well." *Yard-Man*, supra at p.1480. Similarly, the language in this case could be construed as either a reference to the nature of long-term disability benefits only, or as an incorporation of a durational limitation as well.

Once the ambiguity was found to exist, the Court in *Yard-Man* looked to other provisions of the collective bargaining agreement for guidance as to the parties' intent. First, it looked to the provisions for termination of insurance benefits for active employees, and found that said provisions were clearly and explicitly set out, but under conditions that were inapplicable to the retirees. *Yard-Man*, supra at p.1481. In this case, the plan provides that health care benefits will cease 31 days after the termination of employment for active employees. (App. 88A) This provision is clearly inapplicable to disabled employees. Thus, the health care benefits for disabled employers were not tied to the durational limitations of the active group. In fact, specific durational provisions for disabled employees were included in the benefit plan as follows:

> ". . . benefits will continue only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fit . . . No benefits under this plan will continue beyond your 65th birthday month." (App. 119A)

It is apparent that in light of these provisions Mr. McMahon is entitled to continued coverage as he is unable to engage in any and every gainful occupation and he is not yet 65 years of age.

The Court in *Yard-Man* also examined the context in which the retiree benefits arose, finding a likelihood that the parties

intended continuing benefits for retirees. Great emphasis was placed upon the fact that retiree benefits are "status" benefits which carry an inference that they continue as long as the status is maintained. *Yard-Man*, supra at p. 1482. The Court found that the nature of these benefits provided another inference of intent.

Long-term disability is certainly a "status" as indicated by the fact that provision is made for disability benefits in the employee benefit plan separately and distinctly from the provision for active employee benefits. (App. 116A) Long-term disability benefits are "status" benefits which carry the inference that they will continue as long-term disability status is maintained. At all times material hereto, Mr. McMahon has maintained the status of long-term disability and is therefore entitled to the attendant "status benefits".

As a disabled employee, plaintiff's status is no different than that of a retiree entitled to the benefits package applicable on the date of his retirement unless there is express language permitting change. While the District Court and the Court of Appeals in this case insisted on express vesting language, the Sixth Circuit in *Yard-Man* found that "the finding of an intent to create interminable rights to retiree insurance benefits in the absence of explicit language is not, in any discernible way, inconsistent with federal labor law." *Yard-Man*, supra at p. 1482.

Keith S. Erbstein, Esq.
BEASLEY, CASEY, COLLERAN, ERBSTEIN,
THISTLE, KLINE & MURPHY
5th Floor
21 S. 12th Street
Phila., PA 19107
(215) 665-1000

Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 87-1298

JOSEPH R. MCMAHON,

Appellant

v.

FRANKLIN MINT COMPANY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 86-7353)
District Judge: Charles R. Weiner

Submitted Under Third Circuit Rule 12(6)
November 2, 1987

Before: SLOVITER and BECKER, *Circuit Judges*, and
COWEN, *District Judge**

(Filed Nov. 5, 1987)

MEMORANDUM OPINION OF THE COURT

---

* Hon. Robert E. Cowen, United States District Court for the District of New Jersey, sitting by designation.

SLOVITER, *Circuit Judge*.

Appellant Joseph R. McMahon, plaintiff in the district court, appeals from the entry of summary judgment for the defendant, Franklin Mint Company, his prior employer in his action seeking to recover the costs of past and future nursing services. During the time when McMahon was employed by Franklin Mint between 1970 and 1978, there was outstanding a comprehensive benefits program (Plan) for certain employees, including plaintiff, which was the result of bargaining between Franklin Mint and plaintiff's union, Teamsters Local 312. This Plan covered, inter alia, disability benefits and health and dental care benefits. On September 3, 1978, plaintiff was injured in a non-work related swimming pool accident which caused quadriplegia and other illnesses realted to this condition. Pursuant to the Major Medical portion of the Plan, plaintiff received 80% of the charges for "at home" professional nursing services after first applying a $75.00 deductible until the benefits under the Plan were changed effective Janaury 1, 1984.

In order to reduce costs, Franklin Mint negotiated with the Teamsters Local 312 for changes in the benefits plan which resulted in some increases and some decreases in benefits. Insofar as they affect plaintiff, these changes reduced his nursing care benefit to 80% for 30 days a year and 50% for an additional 30 days, and increased the deductible to $150. Plaintiff, who had been a member of Teamsters Local 312 at the time of his disability, left the Union shortly thereafter. Under the Plan, however, plaintiff's disability leave status continues him as an employee. Plaintiff was promptly notified by Franklin Mint of the change in benefits.

Plaintiff brought suit in a Pennsylvania state court seeking a declaratory judgment that he was entitled to restoration of the same nursing care benefits provided before the change became effective Janaury 1, 1984, and a money judgment for the cost of reasonable nursing services pursuant to the earlier coverage. Defendant removed the action to the United States District Court for the Eastern District of Pennsylvania, alleging federal

question jurisdiction by virtue of the applicability of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. §§ 1001, *et seq*. The parties stipulated as to the relevant facts and filed motions for summary judgment. The district court gave summary judgment for the defendant.

McMahon does not challenge the district court's holding that ERISA does not require vesting of welfare plans, such as the one at issue in this case, as it does for pension plans. *See* 29 U.S.C. § 1053. Therefore, if McMahon is to recover it must be on the basis of provisions of the Plan itself. Finding no such provision, the district court rejected plaintiff's claim.

McMahon relies primarily on the following language of the Plan:

> BENEFITS DURING LONG-TERM DISABILITY LEAVES: *Medical and Dental Plan Coverage* — Will continue as if active employment was continuing. However, in the event the disability becomes eligible for coverage by Medicare, our plan will become secondary coverage.

App. at 134.

The district court construed this language as stating "that during a long-term disability, an employee of Franklin Mint is entitled to medical and dental plan coverage. It does *not* state that he is entitled to such coverage at any specific rate for the balance of his disability." App. at 110. We agree. Try as we might, we simply find no language that supports McMahon's construction of this clause.

McMahon also relies on the language of the Plan providing that coverage begins when an employee completes the waiting period, continues during employment, and for the 31 days following an effective termination. He attempts to extrapolate from these provisions a commitment that coverage at a specific level continues. For the same reason as set forth above, we construe this language as a commitment to continue coverage, but not at a specified level.

The Plan specifically provides that it "is subject to review and revision by Franklin Mint Corporation." App. at 137. Thus, plaintiff's argument that defendant should have retained the

right to change the coverage in unambiguous language is rejected. It did so.

We agree with the district court that nothing in ERISA nor in the particular benefit plans at issue precluded Franklin Mint and Local 312 from negotiating revisions to the employee benefits package. The fact that plaintiff chose to leave the Union does not relieve him from being bound, together with all other employees in the collective bargaining unit, to the negotiated changes in the Plan. He benefited from the original Plan as negotiated and, in the absence of language vesting the benefit levels specified therein, plaintiff is bound by the revisions in those levels negotiated by the parties. Nothing in the Plan provides that plaintiff is entitled to anything more than the medical or dental benefits provided to other employees who continued in active employment.

For the reasons set forth above, we will affirm the district court's order granting summary judgment for Franklin Mint.

TO THE CLERK:

Please file the foregoing opinion.

Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH R. McMAHON	:	
	:	
	:	
VS.	:	C.A. NO. 86-7353
	:	
	:	
FRANKLIN MINT COMPANY	:	

MEMORANDUM OPINION AND ORDER

WEINER, J. APRIL 28, 1987

Plaintiff originally brought this declaratory judgment action in the Court of Common Pleas of Delaware County seeking restoration of certain nursing care benefits which had been provided by defendant employer under its former health and dental care plan. Defendant subsequently removed the action to the United States District Court for the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1441(b) alleging federal question jurisdiction by virtue of the Employee Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001, *et seq*. Presently before the court are the parties' cross-motions for summary judgment. For the reasons which follow, we grant the motion of the defendant for summary judgment and deny the motion of the plaintiff for summary judgment.

The parties have stipulated to the following facts:

1. Plaintiff is and at all times relevant hereto, has been an employee of the defendant, Franklin Mint, having worked for defendant since 1970, as a shipper or truck driver since 1971.

2. On September 3, 1978, plaintiff, then 27 years old, was injured in a non-work related swimming pool accident, as a result of which he has been suffering from quadraplegia and illnesses associated with that condition.

3. As of September 3, 1978, defendant had in force a health and dental care benefits plan which was a bargained for condition of employment for those employees of the Franklin Mint represented by Teamsters Local 312, as well as numerous other Franklin Mint employees.

4. Teamsters Local 312 has been the exclusive representative of the Shippers and Truck Drivers' bargaining unit since it was certified by the NLRB on March 4, 1971.

5. While on active employment, plaintiff has been a member of Teamsters Local 312, but plaintiff resigned from membership within a few days of his accident.

6. Following his accident, plaintiff has been on a disability leave, during which he has been receiving monthly indemnity.

7. From September 3, 1978, until January 1, 1984, plaintiff periodically submitted bills and vouchers for nursing care which were paid by Franklin Mint Company in accordance with the health and dental care plan then in effect for employees, including those represented by Teamsters Local 312. These payments were made under the Major Medical Expenses Coverage and paid at the rate of 80 percent on a 12 month per year basis for all "Private duty professional nursing services provided by a person who is not a registered graduate nurse or a close relative when a physician certifies that such services are necessary." (See page 24 of Franklin Mint Health and Dental Care Plan attached to Stipulation of Facts as Exhibit A.)

8. In December, 1983, Franklin Mint proposed to Teamsters Local 312 changes in the bargained-for health and dental care plan provided by Franklin Mint to the employees, including those who were members of Local 312. Those changes were agreed to by Local 312 on or about December 19, 1983, to be effective January 1, 1984. Those changes resulted in increased benefits in some instances, and decreased benefits in others. The changes in the health and dental benefits as they relate to plaintiff's need for

nursing care were communicated to plaintiff by Franklin Mint by letter on or about January 4, 1984.

9. These changes in the health benefits plan were undertaken by Franklin Mint because of their decision to implement cost containing measures in their employee benefits program. (See Exhibit B to Stipulation of Facts).

10. Since January 4, 1984, plaintiff has periodically submitted neeessary nursing care bills. In accordance with the provisions of the health care and dental benefits plan in effect since January 4, 1984, Franklin Mint has reimbursed plaintiff at 80 percent of the cost of necessary nursing coverage for 30 days per year and at 50 percent of the cost for another 30 days per year.

In considering a motion for summary judgment, we must determine whether the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show there is no genuine issue as to any material fact, and whether the moving party is entitled to a judgment as a matter of law. Fed.R.Civ.P. 56(c). *Arnold Pontiac-GMC, Inc. v. General Motors Corporation*, 786 F.2d 564, 568 (3d Cir. 1986); *Fragale & Sons Beverage Co. v. Dill*, 760 F.2d 469, 472 (3d Cir. 1985); *Wolk v. Saks Fifth Avenue, Inc.*, 728 F.2d 221, 224 (3d Cir. 1984); *First Jersey National Bank v. Dome Petroleum Limited*, 723 F.2d 335, 338 (3d Cir. 1983). The movant has the burden of demonstrating that there are no genuine issues of material fact and all reasonable inferences from the record must be drawn in favor of the non-moving party. *Gans v. Mundy*, 762 F.2d 338, 340 (3d Cir. 1985); *United States v. Athlone Industries, Inc.*, 746 F.2d 977, 981-82 (3d Cir. 1984); *Small v. Seldows Stationary*, 617 F.2d 992, 994 (3d Cir. 1980).

In view of the parties' stipulation of facts, we find that there are no material facts in dispute and the case is suitable for summary disposition.

We now turn to the central issue in the case *sub judice* of whether despite changes in defendants' health and dental care plan resulting in decreased benefits for out-patient private duty

nursing care, plaintiff is nevertheless entitled to be reimbursed for his nursing expenses in accordance with the health and dental care plan as it was effective on his date of disability.

We begin our analysis by noting that ERISA distinguishes between a "welfare plan", 29 U.S.C. §1002(1), which provides medical, surgical or hospital care, or benefits in the event of sickness, accident, disability, death or unemployment, and a "pension plan", 29 U.S.C. §1002(2), which provides retirement income to employees or results in a deferral of income for periods extending to the termination of covered employment or beyond. More significant for purposes of the case *sub judice* is that under ERISA, pension plans must meet vesting requirements based on age and length of service under 29 U.S.C. §1053, while welfare plans, such as the one in the case *sub judice*, do *not* have to meet vesting requirements. 29 U.S.C. §1051(a). Therefore, the only way plaintiff can contend that his nursing benefits vested upon the onset of his disability is if the plan expressly so provides.

An examination of defendant's health and dental care plan reveals that plaintiff's right to the nursing care benefits was not vested. The plan does not contain any statement whatsoever that out-patient private duty nursing care benefits, or any of the other major medical benefits for that matter, were guaranteed at the rate of 80 percent on a 12 month per year basis for life or for any stated period. On the contrary, the plan expressly provides in a paragraph entitled ADMINISTRATION OF THIS PLAN that "[t]he plan is subject to review and revision by Franklin Mint Corporation." *See* page 21 of Franklin Mint Health and Dental Care Plan attached to the Stipulation of Facts as Exhibit A. In addition, there is no language in the original plan excluding those already disabled and receiving benefits in accordance with the terms of the original plan, from being subject to a revision in the plan.

Plaintiff directs out attention to certain language contained on page 18 of the section of Employees Benefits dealing with "approved time-off". This language provides:

> BENEFITS DURING LONG-TERM DISABILITY LEAVES: *Medical and Dental Plan Coverage* — Will continue as if active employment was continuing. However, in the event the disability becomes eligible for coverage by Medicare, our plan will become secondary coverage.

Exhibit B to Defendant's Motion for Summary Judgment.

Plaintiff's reliance on this language is misplaced. All this language states is that during a long-term disability, an employee of Franklin Mint is entitled to medical and dental plan coverage. It does *not* state that he is entitled to such coverage at any specific rate for the balance of his disability.

Plaintiff argues that the principles of construction that apply to the interpretation of an ambiguous contract are relevant to the case *sub judice*. We do not agree. The health and dental plan, unlike an insurance policy, is not a contract of adhesion where, under Pennsylvania law, any ambiguity in the policy must be construed against the insurer, and in a manner which is more favorable to coverage. *See Buntin v. Continental Insurance Co.*, 583 F.2d 1201, 1207 (3d Cir. 1978). Rather, the health and dental care plan was the result of a collective bargaining agreement between plaintiff's union representative, Teamsters Local 312 and defendant. Thus, Pennsylvania's concern that insurance companies, because of their superior bargaining position, will be able to thwart the reasonable expectation of the consumer purchaser is not prevalent in the case *sub judice* where the terms of the plan were directly the result of collective bargaining between plaintiff's union representative and employer.

Plaintiff contends that "when defendant unilaterally decided to 'implement cost containing measures', they did so without the benefit of authority from either a collective bargaining agreement or the contract language of the plan." Plaintiff's Brief in Support of Motion for Summary Judgment at p. 5. However, this contention contradicts the facts as stipulated by the parties. Defendant did not *unilaterally* revise the health and dental care plan but instead proposed to Teamsters Local 312 certain changes in the bargained-for plan which were agreed to

by Local 312 on or about December 11, 1983. Stipulation of Facts at paragraph 8. Moreover, as noted above, it was the language of the plan which specifically gave defendant the right to review and revise the plan.

Even if defendant had in fact unilaterally revised the plan, "ERISA does not create liability on the part of the employer who changes the kind of health plan provided to employees where no contract prohibits or prevents such change." *Hamilton v. Travelers Insurance Co.*, 752 F.2d 1350, 1351-52 (8th Cir. 1985) quoting *Hamilton v. Travelers Insurance Co.*, 587 F.Supp. 521, 523 (D. Mo. 1984).

The changes in defendant's health and dental care plan resulted in increased benefits in some instances, and decreased benefits in others. Stipulation of Facts at paragraph 8. Unfortunately for plaintiff, one of the decreased benefits happened to include out-patient private duty nursing care benefits. However, in the absence of any vesting requirements for employee welfare benefit plans under ERISA, and any language in the plan itself either creating a guaranteed right to nursing care benefits at a specific rate or excluding those already disabled and receiving benefits in accordance with the original plan from being subject to a revision in the plan, plaintiff is bound by the terms of the revised plan.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH R. McMAHON	:	
	:	
	:	
VS.	:	C.A. NO. 86-7353
	:	
	:	
FRANKLIN MINT COMPANY	:	
	:	APRIL 28, 1987

ORDER

The motion of the plaintiff for summary judgment is DENIED.

The motion of the defendant for summary judgment is GRANTED.

Judgment is entered in favor of the defendant and against the plaintiff.

IT IS SO ORDERED.

CHARLES R. WEINER

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 87-1298

JOSEPH R. MCMAHON,

Appellant

v.

FRANKLIN MINT COMPANY

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 86-7353)
District Judge: Charles R. Weiner

Before: SLOVITER and BECKER, *Circuit Judges*, and
COWEN, *District Judge**

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted under Third Circuit Rule 12(6) on November 2, 1987.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the District Court entered April 28, 1987 be, and the same is, hereby affirmed.

---

* Hon. Robert E. Cowen, United States District Court for the District of New Jersey, sitting by designation.

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-1298

JOSEPH R. MCMAHON

Appellant

v.

FRANKLIN MINT COMPANY

Appellee

APPELLANT'S BRIEF

Appeal from Entry of Summary Judgment
in the United States District Court
for the Eastern District of Pennsylvania

Benedict A. Casey, Esquire
BEASLEY, HEWSON, CASEY,
COLLERAN, ERBSTEIN
& THISTLE
21 South 12th Street,
5th Floor
Philadelphia, PA 19107-3683
(215) 665-1000

Attorney for Appellant

Jerome A. Hoffman, Esquire
Dechert, Price & Rhoads
3400 Centre Square West
1500 Market Street
Philadelphia, PA 19102
(215) 972-3578

Attorney for Appellee

TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES

OTHER AUTHORITIES

STATEMENT OF SUBJECT MATTER JURISDICTION AND APPELLATE JURISDICTION

Jurisdiction is based on a federal question presented under the Employee Retirement Security Act of 1974 (ERISA) 29 U.S.C. Sections 1001 et. seq. Appellate Jurisdiction is established by 28 U.S.C. 1291, this being an appeal from a final Order of the Federal District Court for the Eastern District of Pennsylvania.

STATEMENT OF ISSUES

Was it not error for the Court below to conclude that the only way plaintiff could obtain continuing nursing benefits was ". . . if the plan expressly so provides"?

STATEMENT OF CASE

Suit was originally filed by plaintiff in the Court of Common Pleas of Delaware County for Major Medical Health Care Benefits. It was timely removed by defendant to the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. Section 1441(b). Federal question jurisdiction is estabished by virtue of the Employee Retirement Security Act of 1974 (ERISA) 29 U.S.C. Section 1001 et seq.

The matter was considered in the Court below on submission of stipulations of fact (R.R. 182-184a) and cross-motions for summary judgment. On April 28, 1987, the Court entered summary judgment for defendant from which plaintiff appeals.

STATEMENT OF FACTS

Plaintiff was first employed by defendant in 1970. He was initially a shipper, then a truck driver. On September 3, 1978, plaintiff was injured in a non-work related swimming pool accident which caused quadraplegia and other illnesses related to this condition. (R.R. 182a) At the time of plaintiff's accident, defendant had in force for virtually all employees of the company, including plaintiff, a comprehensive benefits program which covered a full range of benefits from paid holidays to

vested retirement. (R.R. 115a — 181a) In addition to disability benefits which plaintiff continues to receive, the plan provided significant health and dental care benefits.

It is this part of the benefits program which is in issue. At the time of plaintiff's 1978 accident and disability, the Major Medical portion of the plan called for payment of 80 percent of the charges after first applying a $75.00 deductible as follows:

> "Eligible charges for Major Medical coverage are:
>
> . . . Private duty professional nursing services by a registered graduate nurse other than a close relative.
>
> Private duty professional nursing services provided by a person who is not a registered graduate nurse or a close relative when a physician certifies that such services are necessary . . ." (R.R. 140a)

Since the time of his discharge from a rehabilitation center, plaintiff has been certified by his physician to require "at home" professional nursing services. Until January 1, 1984, defendant paid 80 percent of these charges, upon submission of bills, after annually applying the one deductible of $75.00. (R.R. 183a) Defendant does not dispute the need for nursing care nor the reasonableness of the charges.

As of January 1, 1984, the nursing care benefits were changed. As they relate to plaintiff, these changes resulted in no increased benefits, but reduced his nursing care benefit to 30 days per year at 80 percent and 30 days per year at 50 percent. (R.R. 184a) Thus, plaintiff has been annually deprived of reimbursement for 30 percent of these charges for one month and 80 percent for ten months. At the same time, the deductible for all Major Medical expense was increased from $75.00 to $150.00. As admitted by defendant, "These changes in the health benefits plan were undertaken by Franklin Mint because of their decision to implement cost containing measures in their employee benefits program." (R.R. 184a)

There is no question that at the time of his disability on September 3, 1978, plaintiff was a member of Teamsters Local 312. Union members accepted the same benefits package that

was given to all non-exempt employees of the defendant. Shortly after his accident and because of his disability, plaintiff withdrew from union membership, *but continued his status as employee at first on a Short-Term Disability for six months, since then he has been on the plan's Long-Term Disability*.

Plaintiff's status during his disability is important to an understanding of the continuation of his benefits package. The contract provides that during a long-term disability the coverage ". . . will continue as if active employment was continuing." (R.R. 134a) Coverage for all employees essentially ". . . begins when an employee completes the waiting period, continues during employment and for the 31 days following an effective date of termination." (R.R. 138a) The Health and Dental Care portion of the plan also provides as follows for a: "MAXIMUM BENEFIT: The lifetime benefit available under this Health Care Plan is $1,000,000 per person." (R.R. 143a) The only provision relating to termination of these benefits is that "Plan participation for eligible employees and their dependents will cease *31 days after termination of employment*." (R.R.145a)

It is of particular interest that the plan provides for extension of benefits after termination of employment where the beneficiary — employer or dependent — is 1) totally disabled at the time of termination and 2) the expense incurred is connected with the injury or illness causing the disability. (R.R. 146a) Surely the parties could not have intended less coverage for a continuing employee than for one who is terminated.

Moreover, the provisions for long-term disability in the employee benefit plan states that ". . . [A]fter two years, benefits *will continue* only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fit . . . No benefits under this plan *will continue* beyond your 65th birthday month." (R.R. 164a) The disability portion of the plan provides also that coverage ". . . *continues* during employment and for 31 days following an effective date of termination." (R.R. 163a) It is apparent from the contract language and the stipulated facts that Mr. McMahon has met all of the conditions for continued coverage. He is completely unable to engage in any gainful occupation; he is not 65 years of age, and he has not been

effectively terminated. The language evinces an intent to provide long-term disability benefits until age 65, termination of employment, or ability to engage in any gainful occupation. There is no indication that long-term disability benefits are subject to change.

Simply stated, plaintiff contends that neither his employer nor his former union have a contractual right to change plaintiff's benefits program. He has earned his contract benefits through eight years of employment. As a disabled employee, plaintiff's status is no different than that of a retiree entitled to the benefits package applicable on the date of his retirement unless there is express language permitting a change.

STATEMENT OF RELATED CASES AND PROCEEDINGS

It is hereby certified that counsel for plaintiff/appellant is Benedict A. Casey, Esquire, of Beasley, Hewson, Casey, Colleran, Erbstein & Thistle, and that he knows of no other cases pending before this Court involving the same or similar issues.

BEASLEY, HEWSON, CASEY, COLLERAN,
ERBSTEIN & THISTLE

By:_____
BENEDICT A. CASEY

ARGUMENT

A. Standard for Review

This matter was submitted to the Court below on cross-motions for summary judgment. After finding that there are no material issues of fact, the Court considered issues of contract and statutory interpretation in entering judgment for defendant. Interpretation of contracts and statutes are question of law fully reviewable on appeal, not subject to F.R.C.P. 52(a), *Chevron, USA v. Belco Petroleum Co.* 755 F.2d 1151 (5th Cir. 1985), *Washington Metropolitan Area Transit Authority v. Mergentime Corp.* 626 F.2d 959 (D.C. Cir. 1980).

B. The Court Below Erred in Requiring Express Contract Provisions for Vesting

ERISA distinguishes between a "welfare plan," 29 U.S.C. Section 1002(1), which provides medical surgical or hospital care, or benefits in the event of sickness, accident, disability, death or unemployment, and a "pension plan," 29 U.S.C. Section 1002(2), which provides retirement income to employees or results in a deferral of income for periods extending to there termination of covered employment or beyond. Pension plans must meet participation, benefit accrual, and vesting requirements of the Act, based on age and length of service under 29 U.S.C. Sections 1051 through 1061, while welfare plans are not required to do so. 29 U.S.C. Section 1051(1).

ERISA 29 U.S.C. 1141(a) also provides a broad exemption clause negating almost all common law causes of action involving employee benefit plans as defined, which has led to the conclusion that ERISA provides virtually an exclusive source of employee remedy. *Pilot Life Ins. Co. v. Dedeaux* U.S. 107 S.Ct. 1549 (1987) and *Metropolitan Life v. Taylor* 107 S.Ct. 1542 (1987).

Absent specific statutory provisions, the Federal Courts are required to fashion a body of Common Law appropriate to the enforcement of the Act and consistent with justice. *Scott v. Gulf Oil Corp.* 754 F.2d 1499 (9th Cir. 1985), *Menhorn v. Firestone Tire & Rubber Co.* 738 F.2d 1496 (9th Cir. 1984).

While unprotected by ERISA itself "welfare benefits" have been found to vest or continue in force where either contract language or circumstances surrounding employment have been said to expressly or impliedly so provide. Certainly, unless contrary to the policy of ERISA, the Courts will apply the express language of a PLAN or Collective Bargaining Agreement. *Flinchbaugh v. Chicago Pneumatic Tool Co.*, 531 F. Supp. 110 (W.D. Pa. 1982).

In appropriate circumstances, a collective bargaining agreement can also be a means of determining the intent of a benefit plan, as to when or whether it can be changed or terminated. It is clear that, where a plan by the terms of a wage agreement between an employer and the union requires its continuation only during the course of the agreement, it can be cancelled by the employer at the end of the contract term. *Dist. 17, Dist. 19, Local U. 7113 v. Allied Corp.*, 735 F.2d 121 (4th Cir. 1984) *cert denied* 105 S.Ct. 3537.

On the other hand, it is also clear that an employer, by failing to provide benefits required by contract, whether collectively bargained for benefits or not, is a violation of the employer's ERISA fiduciary duty. Thus, in *Viggiano v. Shenango China Div. of Anchor Hocking*, 574 F. Supp. 861 (W.D. Pa. 1983) vacated and remanded on other grounds 750 F.2d 276 (3d cir. 1984) cancellation of health care benefits at the beginning of a lawful strike, contrary to a collectively bargained for agreement to supply coverage for six months during a strike, was found to be violative of the agreement and of the fiduciary duty owed to participants in the benefit plan.

The present case involves a man who is admitted to be permanently, totally disabled. There is every reason to believe that insofar as the developing ERISA federal common law is concerned, Mr. McMahon is no different than a person who is retired.

A leading case involving welfare benefits for retirees is *Agricultural Implement Workers of America v. Yard-Man Inc.* 716 F.2d 1476 (6th Cir. 1983). Although interpreting a collective bargaining agreement rather than plan language, the issues are essentially the same as the present case.

It has been stipulated that the original health care plan was a bargained for condition of employment. Thus, either the collective bargaining agreement or the plan itself will contain any provision for vesting of welfare benefits. Since there is no collective bargaining agreement before the Court, we look to the plan only. It provides in this case that medical and dental plan coverage "will continue as if active employment was continuing" for long-term disability leaves. (R.R. 134a) It provides further that "coverage begins when an employee completes the waiting period, *continues* during employment, and for the 31 days following an effective termination." (R.R. 138a) (emphasis added)

The conditions for duration of the coverage for a disabled person such as Mr. McMahon are specified as follows: "benefits *will continue* only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fit . . . No benefits under this plan *will continue* beyond your 65th birthday month." (R.R. 164a) It is apparent from the contract language and the stipulated facts that Mr. McMahon has met all of the conditions precedent to continued coverage. He is completely unable to engage in any gainful occupation; he is not 65 years of age, and he has not been effectively terminated.

It is submitted that this language unambiquously confers upon plaintiff a right to the benefits package in force at his disability.

As previously discussed, the coverage provisions evidence an intent of continued coverage. Absent any unambigiously expressed power to terminate, the employer should be prohibited from doing so.

Where language dealing with duration of coverage is regarded as ambiguous, the *Yard-Man* Court supra provides a check list of basic principles of interpretation which are appropriate in federal common law. These include ". . . look to explicit language . . ."; and ". . . interpret each provision in question as part of the integrated whole . . . each provision shall be construed consistently with the entire document . . ." *Yard-Man* supra at p 1480.

Additionally, that Court considered reasonableness and "likelihood" as affecting the intent of the parties *Yard-Man* supra at pp 1481-1482. The plan in the present case provides for continuation of health care and major medical benefits beyond termination for employees who have terminated as follows:

> If the Health Plan for you or a dependent is terminated, the protection will be extended to cover certain expenses after the last date of coverage if both of the following conditions are met:
>
> • The individual incurring the expenses must have been totally disabled by illness or injury or the time the coveraged terminated.
>
> • The expenses incurred after the date coverage terminated must be in connection with the illness or injury which caused the total disability. (R.R. 146a)

Plaintiff has been totally disabled from his injury of September 3, 1978. All of the nursing charges which are in issue here relate back to that injury. It is apparently defendant's position that if Mr. McMahon had "terminated" his employment after his accident this clearly unambiguous language would have provided benefits forever, so long as plaintiff was 1) totally disabled and 2) the expense incurred was related to the injury causing disability.

Defendant contends essentially that it has retained the right to change the package of benefits by the language: "The plan is subject to review and revision by Franklin Mint Corp." (R.R. 137a) It is also argued by defendant that ". . . medical . . . expenses are incurred," (R.R. 138a) suggests a limited duration of coverage.

Plaintiff contends that such language falls far short of the definitive, unambiguous right to change benefits for retirees, pensioners and disabled that is required by *Yard-Man* supra and In re *White Farm Equipment Co. v. White Motor Corp.* 788 F.2d 1186 (6th Cir. 1986). In *White* supra, the Sixth Circuit clearly pronounced two related compelling policies of the law which have application here. First, the Court applied Labor

Management Relations Act federal common law cases such as *Yard-Man* supra to ERISA, *White Farm* supra at pp 1190, 1191. Secondly, there was clearly established a standard of proof requiring that the evidence must ". . . unambiguously establish the existence or scope of a termination clause." *White* supra at p 1193.

Clearly, if defendant intended to retain a right to change the coverage, it knew how to do so in unambiguous language. For compelling evidence of this, one need look only at the same document at page 57. There, in dealing with the Retirement Plan, the defendant stated in no uncertain terms that ". . . it reserves the right to amend or end the Plan (Retirement Plan) at its discretion." (R.R. 173a)

The word "review" presents no problem of interpretation. The question is then what was intended by the word "revision"?

According to *Webster's New Collegiate Dictionary,* 1973 Ed., p. 984, revise is from the latin revisere, meaning to look at again. It is defined as follows ". . . 1. to look over again in order to correct or improve [a manuscript] 2. a) to make a new, amended, improved or up-to-date version of [a dictionary] b) is provide a new taxonomic arrangement [revising the alpine terms] . . ." "Revision" is simply defined as ". . . 1: an act of revising (as a manuscript), 2: a revised version . . ."

In interpreting the plan here, in effect the Court below premised the opinion with the pronouncement that ". . . the only way plaintiff can contend that his nursing benefits vested upon the onset of his disability is if the plan *expressly* so provides." (emphasis added) (R.R. 108a). Thus, the Court has placed on plaintiff the burden of showing that ". . . he is entitled to such coverage at any specific rate for the balance of his disability." (R.R. 110a) Thus, the Court concluded that welfare benefits are presumed not to vest, for retired or disabled employees, unless there is a specific provision to the contrary.

This is contrary to *Yard-Man* supra which also concluded that ". . . the finding of an intent to create interminable rights to retiree insurance benefits, in the absence of explicit language, is not in any discernable way inconsistent with federal labor law." *Yard-Man* supra at p 1482 citing *Allied Chem. & Alkali Workers*

of America vs. Pittsburgh Plate Glass Co. 404 U.S. 157, 92 S.Ct. 383, 398 (1971).

The reason for this is that with retirees, as with the disabled, benefits are only permissive, not mandatory within the meaning of *The National Labor Relations Act* 29 U.S.C. Section 151 et seq. *Allied Chem.* supra 404 U.S. 164-175, 92 S.Ct. 390-396.

> As such, it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations. (citations omitted) The employees are presumably aware that the union owes no obligation to bargain for continued benefits for retirees. If they forego wages now in expectation of retiree benefits, they would want assurance that once they retire they will continue to receive such benefits regardless of the bargain reached in subsequent agreements.

The Court below relied heavily and inappropriately on *Hamilton v. Travelers Ins. Co.*, 752 F.2d 1350 (CA 8 1985) which involved interpretation of a health and welfare plan. The issue was whether termination of the plan also terminated plaintiff's benefits for an injury occurring during the plan. The same issue as in the present case, but entirely different contract language and circumstances. From a reading of the District Court opinion in *Hamilton v. Travelers Ins.* 587 F. Supp. 521 (D. Mo. 1984), it is apparent that coverage under the group policy in question ended upon termination of the contract. Virtually all of the benefit clauses contained language that benefits continued only so long as ". . . such person is covered under this Part . . ." The major medical portion applied "only to expenses incurred while the employee or dependent . . . is covered under this part . . ." *Hamilton* supra at 587 F. Supp. 523. It is respectfully suggested that *Hamilton* stands only for the proposition that specific termination language will prevail.

So too does *Turner v. Loc. U. No. 302 Intern. Broth. of Team.* 604 F.2d 1219 (9th Cir. 1979). A retired employee unsuccessfully sought to enforce benefits as they were at the

time of his retirement. This was again because the specific language of the collective bargaining agreement permitted the trustees to amend the benefits during the contract period ". . . if in [their] judgment such action was warranted."

In addition to the contract language, the Sixth Circuit has identified two considerations which favor survival of (retiree) benefits beyond the life of the contract. First, the Court held that retiree benefits normally vest because unions are not required to negotiate on their behalf. *Yard-Man* 716 F.2d 1482. Similarly, it cannot be expected that a union will negotiate on behalf of a member who has resigned. Second, the Sixth Circuit in *Yard-Man* categorized retiree benefits as "status benefits" which ostensibly continue so long as the status of retiree continues. As retirement is a status, so is disability. Disability benefits should continue as long as an employee is disabled.

It was stipulated that plaintiff resigned from union membership within a few days of his accident. Consequently, it is unlikely that the bargaining unit represented his interests when a change in disability benefits was effected. Active employees remaining within the bargaining unit were concerned only with their own interests. Where the parties intend that an employee's rights to lifetime health benefits vests upon his retirement, that employee's rights are fixed according to the terms and conditions of the collective bargaining agreement and benefit plans *in effect at the time he retired*. The employee's benefits may not be reduced by virtue of the provisions of a collective bargaining agreement executed after his retirement when he was no longer a union member and was unrepresented at negotiations. *District 29, United Mine Workers of America v. Royal Coal Company* 120 L.R.R.M. 3554 (1985), *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 102 S.Ct. 1226 (1982), n.14.

As previously discussed, there is not any unambiguously expressed agreement permitting reduction of plaintiff's benefits. Conversely, the language of the plan evidences an intent to continue the benefits in the absence of any of the specified

events (i.e., reaching age 65, termination of employment, ability to engage in any gainful occupation), none of which have occurred.

CONCLUSION

Upon application of the appropriate standard of analysis, it is respectfully suggested that this Court find that plaintiff's Motion for Summary Judgment was erroneously refused. The Order granting defendant's Summary Judgment should be reversed, plaintiff's Motion for Summary Judgment should be granted and the matter remanded to the District Court for further proceedings on damages.

BEASLEY, HEWSON, CASEY, COLLERAN,
ERBSTEIN & THISTLE

BY: _____

Benedict A. Casey
Attorney for the Appellant

CERTIFICATION OF BAR MEMBERSHIP

I, Benedict A. Casey, Esquire, hereby certify that I am a member in good standing of the United States Court of Appeals, for the Third Circuit.

BENEDICT A. CASEY
ATTORNEY FOR APPELLANT,
Joseph R. McMahon

CERTIFICATE OF SERVICE

I, Benedict A. Casey, Esquire, hereby certify that on July 21, 1987, the counsel listed below was served by HAND DELIVERY with a true and correct copy of Appellant's Brief and Appendix.

Jerome A. Hoffman, Esquire
Dechert, Price & Rhoads
3400 Centre Square West
1500 Market Street
Philadelphia, PA 19102

BENEDICT A. CASEY
ATTORNEY FOR APPELLANT,
Joseph R. McMahon

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 87-1298

JOSEPH R. MCMAHON,
Plaintiff-Appellant

v.

FRANKLIN MINT COMPANY,
Defendant-Appellee

Appeal from Entry of Summary Judgment
in the United States District Court
for the Eastern District
of Pennsylvania

BRIEF FOR APPELLEE

Jerome A. Hoffman
Michael J. Salmanson
Dechert Price & Rhoads
3400 Centre Square West
1500 Market Street
Philadelphia, PA 19102
(215) 972-3400

Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTES

STATEMENT OF SUBJECT MATTER JURISDICTION AND APPELLATE JURISDICTION

Federal Question Jurisdiction, 28 U.S.C. Section 1331, is raised under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Sections 1001 *et seq*., and under the National Labor Relations Act, 29 U.S.C. Section 141 *et seq*. This Court has jurisdiction over the appeal from the final judgment of the United States District Court for the Eastern District of Pennsylvania in accordance with 28 U.S.C. Section 1291.

STATEMENT OF THE ISSUES PRESENTED

Whether an employer is entitled to revise the health care benefits of an employee on long term disability when the employer-sponsored plan provides that it is subject to revision and the revision is agreed to in collective bargaining? [Answered in the Affirmative by the Court below].

STATEMENT OF THE CASE

Suit was originally filed by plaintiff in the Court of Common Pleas of Delaware County for Major Medical Health Care Benefits. It was timely removed by defendant to the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. Section 1141(b). Federal question jurisdiction is established under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 *et seq.*, and the National Labor Relations Act, 29 U.S.C. Section 141 *et seq*.

The matter was considered in the Court below on stipulations of fact (R.R. 182-184a) and cross-motions for summary judgment. On April 28, 1987, the Court entered judgment for defendant from which plaintiff appeals.

STATEMENT OF FACTS

Plaintiff is and since 1970 has been an employee of the defendant, Franklin Mint Company ("Mint"). Employees like plaintiff are part of a bargaining unit represented by Teamsters Local 312.

On September 3, 1978, plaintiff was injured in a non-work related accident rendering him a quadriplegic. Following that injury, plaintiff requested and was granted a long-term disability leave. Long-term disability leaves were part of a comprehensive employee benefits package that the Mint provided its employees and that, for bargaining unit employees like plaintiff, had been negotiated and agreed to between the Mint and Teamsters Local 312 (R.R. 116a, 182a-183a). The package included medical, dental and life insurance plans as well as various other benefits such as leaves and educational loan programs (*See, e.g.*, R.R. 115a, 116a, 134a, 154a, 162a).

The comprehensive employee benefit package including summary plan descriptions was set out in an employee handbook that had last been revised November 1977. (R.R. 115a *et seq.*). The employee benefits plans expressly provides that "The plan is subject to review and revision by Franklin Mint Corporation." (*See, e.g.*, R.R. 137a, 154a, 162a).

Under the terms agreed to by The Mint and Teamsters Local 312 regarding approved time off, plaintiff continued as an employee of the Mint after his disabling accident and also continued to be covered by the medical, dental and life insurance plans "as if active employment were continuing". (R.R. 134a). Accordingly, he was provided whatever medical, dental or life insurance benefits were provided to other employees who continued in active employment.

In December 1983, the Mint and Teamsters Local 312 again agreed to revisions in the bargained-for medical and dental care plans. These revisions resulted in increased benefits in some instances and descreased benefits in others. One of the benefits that decreased as the result of the agreed-to revision was the amount of reimbursement for the out-of-pocket private

duty nursing care benefit provided under the major medical coverage of the medical and dental plan.

The revisions in the medical and dental benefits as they related to plaintiff's nursing care were communicated to him by the Mint on or about January 4, 1984. Thereafter, he has been reimbursed for all medical and dental expenses for which he has sought reimbursement to date at the levels provided for in the revised plan.

In November 1986, plaintiff filed the instant Declaratory Judgment action seeking restoration of level of reimbursement for the out-of-pocket private duty nursing care which had been provided under the major medical coverage of the medical and dental plan prior to its revision. In essence, plaintiff's lawsuit seeks to continue the medical and dental care benefit levels and coverage he is receiving because of his employment status under the long-term disability plan "as if [his] active employment was continuing" but also wants to exempt himself from any revisions to these "active employee" benefits if the specific benefit is adverse to him.

Plaintiff's claim of special status was rejected by the District Court since it concluded on stipulated facts and documents that nothing in ERISA or in the particular benefits plans precluded the Mint and Local 312 from negotiating the revisions to the employee benefits package that might, in a specific instance, be adverse to plaintiff. On the contrary, the District Court found express language in the Health Care Plan which "specifically gave defendant the right to review and revise the plan." (Memorandum Opinion and Order at p. 8; R.R. 111a).

Since the District Court's interpretation of ERISA as applied to the type of health care plans involved in this litigation is correct and consistent with the law in this and other Circuits and since its interpretation of the contractual language is reasonably derived from the language and intent of the plans as reflected in the stipulated record, the granting of Summary Judgment for defendant was proper and should be affirmed.

STATEMENT OF RELATED CASES AND PROCEEDINGS

This case has not been before this Court previously; nor is counsel aware of any other case or proceeding, which is in any way related, completed, pending or about to be presented before this Court or any other court or agency, state or federal.

STANDARD OF REVIEW

This Court's review of the District Court opinion is plenary, and is not subject to F.R.C.P. 52(a).

ARGUMENT

THE DISTRICT COURT PROPERLY HELD THAT, UNDER THE HEALTH AND DENTAL CARE PLAN AGREED TO BY PLAINTIFF'S UNION AND DEFENDANT, PLAINTIFF'S NURSING CARE BENEFITS DO NOT VEST.

As noted by the District Court, the Health Care Plan in question expressly provided: "This plan is subject to review and revision by Franklin Mint Corporation." (Memorandum Opinion and Order at p. 6; R.R. 109a).[1] By plaintiff's own definition of revision, defendant was therefore entitled "to make a new, amended, improved or up-to-date version" of the plan (Plaintiff's Brief at pp. 12-13). There can be no question, therefore, that the plan allows the Franklin Mint to revise the plan to change the level of nursing care benefits. Plaintiff can demonstrate no reason why the terms of the contract should not be followed.

A. AS AN EMPLOYEE ON LONG-TERM DISABILITY LEAVE, PLAINTIFF DOES NOT ENJOY A SPECIAL STATUS UNDER ERISA.

The health benefits plan in question qualifies as a "welfare plan" under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. Section 1001 *et seq*. As the District Court noted, welfare plans — unlike pension plans — do not have to meet minimum vesting requirements under ERISA. 29 U.S.C. Section 1051(1). Furthermore, as the Eighth Circuit has held: "ERISA does not create liability on the part of the employer who changes the kind of health care plan provided to employees *where no contract prohibits or prevents such change*." *Hamilton v. Travelers Insurance Co*., 752 F.2d 1350 (8th Cir. 1985). In this case, the contract not only has no language preventing such a change, it clearly contains language providing for such a change.

---

1. The Health Care plan at issue is referred to in some documents as the "Franklin Mint Health and Dental Care Plan" and alternatively as the "Franklin Mint Medical and Dental Care Plan."

Nevertheless, the plaintiff argues that as an employee on long-term disability leave, under ERISA he is entitled to special status. Citing *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984), and *White Farm Equipment v. White Motor Corp.*, 788 F.2d 1186 (6th Cir. 1986), the plaintiff argues that the plan language at issue "falls far short of the definitive, unambiguous right to change benefits for retirees, pensioners and disabled (sic) that is required" by *Yard-Man* and *White Farm*. Plaintiff's Brief at p. 12.

While both *Yard-Man* and *White Farm* both discuss whether the welfare benefits of retirees vest, neither case holds that the employer's right to change retiree benefits must be "definitive and unambiguous", nor does either case involve an employee on long-term disability leave. Rather, both cases call upon standard principles of contract interpretation to determine the intent of the parties. *Yard-Man*, 716 F.2d at 1479, *White Farm*, 788 F.2d at 1192-1193.[2] Furthermore, this Court has similarly looked to the language of the contract to determine whether the welfare rights of retirees vest. *See Struble v. New Jersey Brewery Employees' Welfare Trust Fund*, 732 F.2d 325 (3d Cir. 1984); *Cf. In re Reading Company*, 72 Bankr. 258 (E.D. Pa. 1987) (noting that in *Struble*, the Third Circuit rejected an absolute vesting requirement for retirees, looking to the language of the contract instead).

Yard-Man, *White Farm* and *Struble* all agree that regardless of the status of the employee, a Court determining welfare

---

2. Plaintiff is therefore incorrect that *White Farm* "clearly establish a standard of proof requiring that the evidence must '. . . unambiguously establish the existence or scope of a termination clause.' " Plaintiff's Brief at p. 12, *quoting White Farm*, 788 F.2d at 1193. In *White Farm* the Court of Appeals held that the evidence did not unambiguously establish the existence or scope of a termination clause. It therefore determined that the Bankruptcy Court's grant of judgment for the employer was inappropriate, and remanded to the Bankruptcy Court for further fact-finding to determine the intent of the parties. If plaintiff's proposition were correct, no further fact-finding would have been necessary.

benefits rights under ERISA must engage in the same principles of contract interpretation. Furthermore, the plaintiff has not been able to cite a single case suggesting that, under ERISA, an employee on long-term disability should be treated differently from any other employee. Therefore, plaintiff can claim special status under a welfare benefits plan only if the plan itself so provides.

B. UNDER THE PLAN ITSELF, PLAINTIFF'S STATUS AS AN EMPLOYEE ON LONG-TERM DISABILITY DOES NOT EXEMPT HIM FROM REVISIONS TO THE PLAN AGREED TO IN COLLECTIVE BARGAINING.

The employee handbook unambiguously states that, during long-term disability leaves, medical and dental plan coverage "[w]ill continue as if active employment was continuing." (R.R. 134a). Thus, it is clear that the Mint and Teamsters Local 312 intended that employees on long-term disability leave would be entitled to the same levels of benefits as active employees during the time, however long, that they are disabled. This special benefit conferred on disabled employees is clearly advantageous to employees like plaintiff. If the employee were terminated, rather than placed on a leave of absence, the employee would then only receive expenses incurred for preexisting conditions. (R.R. 138a, 146a).[3]

As the level of benefits can be and have been revised for active employees, so too they can be and have been revised for employees like plaintiff on long-term disability leaves. Just as with other active employees, the plaintiff enjoys both the advantages of the benefits increased, and suffers the detriments of the benefits decreased, through revisions to the plan.

---

3. In the case of the Health and Dental Care plan, the coverage for terminated employees provides only for expenses incurred in connection with the illness or injury which caused the total disability. "[E]ligible expenses incurred because of this specific illness or injury will be covered. *Expenses incurred for any other illness or injury will not be covered.*" (R.R. 146a) (emphasis added).

The District Court thus properly rejected the plaintiff's assertion that the language, " 'Benefits During Long-Term Disability Leaves: Medical and Dental Plan Coverage — will continue as if active employment was continuing' " somehow created a vested right to continued nursing care benefits. The District Court reasoned that: "All this language states is that during a long-term disability, an employee of the Franklin Mint is entitled to medical and dental plan coverage. It does *not* state that he is entitled to such coverage at any specific rate for the balance of his disability." (Memorandum Opinion and Order at p. 7; R.R. 109a, *quoting* R.R. 134).

The agreement between Teamsters Local 312 and the Mint thus clearly contemplates that an employee on a long-term disability leave will be treated as an active employee for health and dental care coverage.[4] The intent of the parties can hardly be clearer; under both *Yard-Man* and *White Farm* that intent, as demonstrated by the contract language, is controlling.

Furthermore, the health care plan in question was part of a collective bargaining agreement between the Mint and Local 312. (R.R. 182a-183a). This Court has made clear that whether benefits under a collective-bargaining agreement vest is subjected to the same principles of contract interpretation as any other contract. *See, Struble v. New Jersey Brewery Employees' Welfare Trust Fund*, 732 F.2d 325 (3d Cir. 1984) (rejecting retirees' claims that they had acquire contractually-created vested rights to lifetime retirement benefits under a trust fund agreement. *Accord, Turner v. Local Union No. 302, International Brotherhood of Teamsters, Chauffuers Warehousemen and Helpers of America, et al.*, 604 F.2d 1219 (9th Cir. 1979) (upholding summary judgment in favor of employer; plaintiffs did not have vested health and welfare benefits under collective bargaining agreements).

---

4. The agreement provides for the same type of treatment for employees on long-term disability leave with regard to life insurance. (R.R. 126a). The agreement provides for different treatment for employees on long-term disability leave with regard to other benefits. For example, employees on long-term disability leave do not accrue pension benefits while on leave, although they do not lose previously earned benefits. (R.R. 126a).

Plaintiff apparently contends that because of his status as a disabled employee, the Court should create a presumption in his favor in interpreting the contract. (Plaintiff's Brief at pp. 14-15). While it is true that the status of the parties in collective bargaining may be relevant to determining intent where there is an ambiguity, an employee's status in collective bargaining creates no presumptions. Thus, plaintiff's reliance on *Yard-Man* is misplaced. In that case the Court, while finding that the collective bargaining history supported the plaintiff's construction of the contract that the retirees' benefits vested, made clear the limited impact of that finding:

> This is not to say that retiree insurance benefits are necessarily interminable by their nature. Nor does any federal labor policy identified to this Court presumptively favor the finding of interminable rights to retiree insurance benefits when the collective bargaining agreement is silent. Rather, as part of the context from which the collective bargaining agreement arose, the nature of such benefits simply provides another inference of intent. Standing alone, this factor would be insufficient to find an intent to create interminable benefits. In the present case, however, this contextual factor buttresses the already sufficient evidence of such intent in the language of this agreement itself.

Yard-Man, 716 F.2d at 1482.

In this case, there is no ambiguity. Further, the context of collective bargaining supports the District Court's conclusion that the plaintiff's benefits did not vest, but rather it was intended that the plaintiff — like all other employees in his collective bargaining unit — was bound by the bargained-for changes in the health care plan.

Insurance benefits and premiums are a mandatory subject of bargaining under the National Labor Relations Act. *Allied Chemical & Alkali Workers, Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 159 (1971); *Oil, Chemical and Atomic Workers International Union, AFL-CIO v. NLRB*, 547 F.2d 575 (D.C. Cir. 1977) *cert. denied sub nom. Angle v. NLRB*, 431 U.S.

966 (1977). Thus, both Local 312 and Frnaklin Mint had a duty to, and did in fact, bargain over the changes in the health plan[5]

Although plaintiff is on disability leave, he is still a member of the collective bargaining unit. *See, e.g., E.L. Wiegand Division v. NLRB*, 650 F.2d 463 (3d Cir. 1981), *cert. denied*, 455 U.S. 939 (1982) (employer committed unfair labor practice by suspending sickness and accident benefits to disabled employees who were members of striking collective bargaining unit); *Texaco, Inc. v. NLRB*, 700 F.2d 1039 (5th Cir. 1983), *reh. denied*, 705 F.2d 450 (same.)[6] Both *E.L. Wiegand* and *Texaco* rely on the assumption that the disabled employees retained their status as members of the collective bargaining unit. *See E.L. Wiegand*, 650 F.2d at 465 ("[T]his case arises from the employer's action in terminating payment of sickness and accident. . .benefits to disabled employees during a strike by the bargaining unit of which they were members"). Thus, unlike the health benefits of retirees, health benefits of disabled members of the bargaining unit on leaves of absence are a mandatory subject of bargaining.

It is a fundamental principle of labor law that, just as the employer is bound to bargain collectively with a certified bargaining agent, the employees represented by the bargaining agent are bound by the contract negotiated by the agent on their

---

5. In fact, given that the plaintiff was a member of the collective bargaining unit exclusively represented by Local 312, the Mint would have committed an unfair labor practice under sections 8(a)(5) and 9(a) of the Act, 28 U.S.C. Sections 158(a)(5) and 159(a), if it had negotiated a separate agreement with the plaintiff.

6. The fact that plaintiff resigned from the Union after the accident (Stipulated facts para. 5, R.R. 183a) is immaterial to his being part of and bound by the duly certified Union for the bargaining unit. Under Section 7 of the National Labor Relations Act, 29 U.S.C. Section 157, it is axiomatic that members of the bargaining unit are guaranteed the right not to be members of the Union and to resign if they so choose, *See, e.g., Pattern Makers' League of North America v. NLRB*, 473 U.S. 95, 105 S.Ct. 3064, 3070 (1985) (By Section 8(a)(3) of the National Labor Relations act protects the employee whose views come to diverge from those of his union); they are however bound by the agreements of the Union.

behalf. This is true even if an individual contract would have been more beneficial than the collectively-bargained contract. *J.I. Case Co. v. NLRB*, 321 U.S. 332 (1944).

To establish a rule that a person on a long-term disability leave is not bound by a collective bargaining agreement requires this Court to carve out an exception from the cornerstone of federal labor law. A court should be loath to make such an exception absent support from either the statute itself or its legislative history. *Cf. NLRB v. Actors' Equity Association*, 644 F.2d 939 (2nd Cir. 1981) (nonresident aliens were employees under Act when nothing in terms or construction suggests limitation). And while in this case excluding the plaintiff from the terms of a collective bargaining agreement may have some benefits to him with regard to one item of major medical coverage, other situations may exist in which a person on long-term disability leave benefits from being covered by and accepting the changes in a health care plan brought about by collective bargaining. Indeed plaintiff himself is a beneficiary of those parts of the health care plan in which the union bargained for, and won, increased benefits.

CONCLUSION

The Health Care Plan agreed to by the Mint and Teamsters Local 312 that was in effect at the time plaintiff first became disabled establishes that the defendant has the right to review and revise the provisions of the plan. Neither ERISA, nor the terms of that plan, nor the provisions of the agreed to long-term disability plan suggests that plaintiff, as an employee on long-term disability leave, was to be exempt from such revisions. In fact, the intent of the parties, as demonstrated by the contractual language and by plaintiff's status in collective bargaining, is clear that employees on long-term disability leaves were to be subjected to the same revisions as those continuing in active employment. Because plaintiff is bound by the revisions made in the plan, this Court should uphold the District Court's Summary Judgment Order in favor of the defendant.

CERTIFICATION OF BAR MEMBERSHIP

I, Michael J. Salmanson, hereby certify that I am a member in good standing of the United States Court of Appeals for the Third Circuit.

Michael J. Salmanson
Attorney For Appellee
Franklin Mint

CERTIFICATE OF SERVICE

I, Michael J. Salmanson, hereby certify that on this 20th day of August, 1987, I caused to be served by Hand Delivery, two copies of the foregoing Brief for Appellee upon the following:

Benedict A. Casey, Esquire
Beasley, Hewson, Casey, Colleran, Erbstein & Thistle
21 South Street, 5th Floor
Philadelphia, PA 19107-3683

_____

Michael J. Salmanson

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 87-1298

JOSEPH R. MCMAHON,

Appellant

vs.

FRANKLIN MINT COMPANY,

Appellee

REPLY BRIEF FOR APPELLANT

Appeal from Entry of Summary Judgment in the United States District Court for the Eastern District of Pennsylvania

---

Benedict A. Casey, Esquire
BEASLEY, HEWSON, CASEY, COLLERAN, ERBSTEIN & THISTLE
21 South 12th Street, 5th Flr.
Philadelphia, PA 19107-3683
(215) 665-1000

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF CASES

PLAINTIFF'S REPLY STATEMENT OF FACT

Defendant has asserted incorrectly that plaintiff wishes to share whatever new benefits are available to him under the new (1984) contract, but avoid the loss of his earlier contract nursing care benefits. (Appellee Brief pp viii and p.10.) Nowhere in this record or out of it is there any indication that plaintiff has sought such new contract benefits. On the contrary, the only benefits ever claimed by him are in the benefits package which everyone admits was in effect on the date of plaintiff's accident and total disability of September 3, 1987.

Plaintiff does not seek a special status other than what he earned by contract prior to his accident and total disability.

PLAINTIFF'S REPLY ARGUMENT

Defendant misconceives plaintiff's argument on the nature of the contract in issue. That defendant has a right to revise and review the Plan is not in issue, regardless of the meaning of the word "revision". The issue simply stated is: Did the original contract reserve to the employer or union or both, the right to change the "welfare benefits" of a toally disabled employee?

Plaintiff has argued that "welfare benefits" are linked to disability benefits (R. R. 134a) which "will continue" (R. R. 164a) to age 65, as long as the employee is unable to work. The duration of health and dental care benefits begins after a brief working period and "continues during employment, and for 31 days following an effective termination." (R. R. 138a)

The lack of language expressing any other limitation or duration of benefits is essentially the basis for plaintiff's contention that the express language of the contract protects plaintiff's right to continued benefits.

While plaintiff sees no ambiguity in this contract language, if arguendo, it is seen as ambiguous, then a reading of the entire contract is necessary in order to determine the intent of the parties.[1] It is hardly likely that the contracting parties, particu-

---

1. *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir.

larly the employer, intended more complete and durable benefits for a terminated employee than for one who is disabled. Yet if one accepts defendant's argument this is exactly what would happen.

Defendant admits (defendant's Brief, p.4) that "[i]f the employee were terminated, . . . the employee would then only receive expenses incurred for pre-existing conditions". Defendent does not contend that it had the right to "revise" benefits for a terminated person whose illness or injury preceded his termination. Indeed as to such persons, the contract specifically provides that ". . . the protection will be extended . . ." if, 1. the individual incurring the expense was totally disabled at the time of termination, and 2. the expense incurred is related to the illness or injury causing the disability. (R. R. 146a) Thus, defendant concedes that if plaintiff had terminated his employment it was defendant's intention to continue unrevised benefits, but as to disabled persons the defendant reserved the right to revise benefits for existing injuries causing total disability.

The District Court not only rejected plaintiff's argument as to the clarity of intent to provide continuing benefits, but ruled that ". . . the only way plaintiff can contend that his nursing benefits vested upon the onset of his disability is if the plan *expressly* so provides." (emphasis added) (R.R. 108a).[2] Thus, the Court concluded that welfare benefit plans are presumed not to vest unless there is a specific provision to the contrary. Appellee apparently abandons the lower court's theory, for nowhere in its brief does it argue the need for "express" vesting language" in the contract. Instead, appellee focuses mistakenly on the Union negotiations as a basis for the employer's power to change or terminate the benefits.

1983), *cert. denied*, 465 U.S. 1007 (1984). *White Farm Equipment v. White Motor Corp.*, 788 F.2d 1186 (6th Cir. 1986).

2. The Court reasoned also that the language ". . . will continue as if active employment was continuing" means only ". . . that during a long-term disability, an employee of the Franklin Mint is entitled to medical and dental plan coverage. It does not state that he is entitled to such coverage at any specific rate for the balance of his disability." (R.R. 109a)

Appellee relies solely on *E. L. Wiegand Division v. NLRB*, 650 F.2d 463 (3rd Cir. 1981), *cert. denied*, 455 U.S. 939 (1982), and *Texaco, Inc. v. NLRB*, 700 F.2d 1039 (5th Cir. 1983), *reh. denied*, 705 F.2d 450 to support the assumption that disabled employees retain their status as members of the collective bargaining unit. However, in both cases the employees involved clearly remained a viable part of the union. In *Wiegand*, there is no evidence that any of the employees were totally and permanently disabled as is the plaintiff in this case. So, too, in *Texaco*, the disablity of the two employees amounted to no more than sick leave for several weeks. Moreover, in neither case did the employee resign from union membership as did the plaintiff in this case.

Appellee relies on *Pattern Makers' League of North America v. NLRB*, 473 U.S. 95, 105 S.Ct. 3064 (1985) for the assertion that although employees have the right to resign from union membership at any time, "they are, however, bound by the agreements of the union." (Appellees Brief, p.9, footnote 6). While *Pattern Makers'* supports the right of an employee to resign union membership, it does not support the proposition that those who have resigned are nonetheless bound by the agreements of the union.

On the contrary, in a case involving retired employees, *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S. Ct. 383 (1971), the Supreme Court reasoned that since retirees are not members of the bargaining unit, the bargaining agent is under no duty to represent them in negotiations. The reasons offered are that active employees may well have a conflict of interest with those who are retired.

> "Having once found it advantageous to bargain for improvements in pensioners' benefits, active workers are not forever thereafter bound to that view or obligated to negotiate in behalf of retirees again. To the contrary, they are free to decide, for example, that current income is preferable to greater certainty in their own retirement benefitted or,

indeed, to their retirement benefits altogether. By advancing pensioners' interests now, active employees, therefore, have no assurance that they will be the beneficiaries of similar representation when they retire." *Allied Chemical & Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 181, 182, 92 S.Ct. 383, 398, 399.

That the plaintiff is in the same position as a retiree for purposes of interpreting the welfare benefit plan is apparent. Because the plaintiff is totally and permanently disabled, he will never resume employment. He has resigned from the union and does not attend union meetings and/or participate in negotiations. There exists no incentive for the active employees to represent his interests in collective bargaining any more than the pensioners in *Allied Chemical, supra*. For all practical purposes, plaintiff has been forced to retire from employment and should be given the same consideration as those who have voluntarily retired.

Appellee contends that plaintiff incorrectly interpreted *White Farm Equipment v. White Motor Corp.*, 788 F. 2d 1186 (6th Cir. 1986) as establishing a standard of proof requiring that the evidence must unambiguously establish the existence or scope of a termination clause. Indeed, *White Farm* does require unambiguous language. In cases where that standard has not been met, *White Farm* requires that fact-finding be conducted to ascertain the parties' intent. It is clear that plaintiff acknowledges the necessity of determining the intent of the parties if an ambiguity has been found. (Plaintiff's Brief at pp. 11-12.)

It is plaintiff's contention that the language in the employee handbook which states that medical and dental coverage "will continue as if active employment was continuing" is unambiguous when considered in the light of the disability benefits language. On the other hand, as in *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Yard-Man, Inc., supra*, language that the plan "will provide insurance benefits equal to the active group" was held to be ambiguous and required an analysis of the entire contract. If

the present plan is said to be ambiguous, then *Yard-Man* simply requires an analysis of the entire plan to determine intent.

BEASLEY, HEWSON, CASEY, COLLERAN,

BENEDICT A. CASEY
Attorney for Appellant
Joseph R. McMahon

CERTIFICATION OF BAR MEMBERSHIP

I, Benedict A. Casey, Esquire, hereby certify that I am a member in good standing of the United States Court of Appeals for the Third Circuit.

BENEDICT A. CASEY
Attorney for Appellant
Joseph R. McMahon

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH R. McMAHON	:	CIVIL ACTION
	:	
VS.	:	
	:	
FRANKLIN MINT COMPANY	:	NO. 86-7353

STIPULATION OF FACTS

1. Plaintiff is and at all times relevant hereto, has been an employee of the Defendant, Franklin Mint, having worked for defendant since 1970, as a shipper or truck driver since 1971.

2. On September 3, 1978, plaintiff, then 27 years old, was injured in a non-work related swimming pool accident, as a result of which he has been suffering from quadraplegia and illnesses associated with that condition.

3. As of September 3, 1978, defendant had in force a health and dental care benefits plan which was a bargained for condition of employment for those employees of the Franklin Mint represented by Teamsters Local 312, as well as numerous other Franklin Mint employees.

4. Teamsters Local 312 has been the exclusive representative of the Shippers and Truck Drivers' bargaining unit since it was certified by the NLRB on March 4, 1971.

5. While on active employment, plaintiff had been a member of Teamsters Local 312, but plaintiff resigned from membership within a few days of his accident.

6. Following his accident, plaintiff has been on a disability leave, during which he has been receiving monthly indemnity.

7. From September 3, 1978, until January 1, 1984, plaintiff periodically submitted bills and vouchers for nursing care which were paid by Franklin Mint Company in accordance with the health and dental care plan then in effect for employees, including those represented by Teamsters Local 312. These payments were made under the Major Medical Expenses Coverage and paid at the rate of 80 percent on a 12 month per year basis for all "Private duty professional nursing services provided

by a person who is not a registered graduate nurse or a close relative when a physician certifies that such services are necessary." (See Exhibit A, Healthcare Agreement.)

8. In December, 1983, Franklin Mint proposed to Teamsters Local 312 changes in the bargained-for health and dental care plan provided by Franklin Mint to the employees, including those who were members of Local 312. Those changes were agreed to by Local 312 on or about December 19, 1983, to be effective January 1, 1984. Those changes resulted in increased benefits in some instances, and decreased benefits in others. The changes in the health and dental benefits as they relate to plaintiff's need for nursing care were communicated to plaintiff by Franklin Mint by letter on or about January 4, 1984.

9. These changes in the health benefits plan were undertaken by Franklin Mint because of their decision to implement cost containing measures in their employee benefits program. (See Exhibit B.)

10. Since January 4, 1984, plaintiff has periodically submitted necessary nursing care bills. In accordance with the provisions of the health care and dental benefits plan in effect since January 4, 1984, Franklin Mint has reimbursed plaintiff at 80 percent of the cost of necessary nursing coverage for 30 days per year and at 50 percent of the cost for another 30 days per year.

Respectfully submitted,

BEASLEY, HEWSON, CASEY, COLLERAN, ERBSTEIN & THISTLE

By:_____

Benedict A. Casey
Attorney for the Plaintiff

DECHERT PRICE & RHOADS

By:_____

Michael J. Salmanson
Jerome A. Hoffman
Attorneys for Defendant

To All Employees,

This handbook has been prepared to provide you with information on the benefits in effect at Franklin Mint Corporation. You should read it carefully and become familiar with its contents. If any portions are not clear, you may wish to discuss than with your supervisor or the Benefits Office in Personnel.

Revision Date: November 1977

EMPLOYEES BENEFITS

APPROVED TIME-OFF

Approved time-off includes Holidays, Vacations, Bonus Days, Sick Days, Death in the Immediate Family Absence, and Leaves of Absence.

Holidays:

Franklin Mint Corporation employees located at Franklin Center, Pennsylvania, Rockdale, Pennsylvania, and Franklin Library, New York, observe 10½ holidays during each calendar year:

New Year's Day
President's Day
Good Friday
Memorial Day
July 4th
Labor Day
Thanksgiving Day
Friday after Thanksgiving
Christmas Eve (half day)
Christmas Day
Employee's Birthday or Personal Day

Precious Metals Corporation of America employees observe 10½ holidays during each calendar year:

New York's Day
President's Day
Good Friday
Memorial Day
July 4th
Labor Day
Thanksgiving Day
Christmas Eve (half day)
Two floating holidays which may be designated by management.

Sloves Organization employees observe 12 holidays during each calendar year:

New Year's Day
President's Day
Good Friday
Memorial Day
July 4th
Labor Day
Election Day
Thanksgiving
Friday after Thanksgiving
Christmas Eve (half-day)
Christmas Day
New Year's Eve (half-day)
One floating holiday to be designated prior to 1 July annually by management.

Eligibility:

EXEMPT—All exempt employees are eligible for recognized holidays and receive holiday pay.

NON-EXEMPT—The following non-exempt employees are eligible for holiday pay provided they work the scheduled workday preceding and following the holiday:

- Full-time regular non-exempt employees.
- All regular part-time employees who are normally scheduled to work on the day of the week on which the holiday falls will be paid at their normal hourly rate for the number of hours for which they were scheduled to work.
- All temporary employees who have completed four work weeks preceding the holiday and have worked at least 108 hours during that four-week period.

If weekend overtime is scheduled by the end of the prior day's shift and if the weekend overtime is preceding or following a Monday or Friday holiday, the overtime day is considered the scheduled workday which must be worked for holiday pay eligibility.

If you are absent on the workday preceding or following the holiday due to an approved vacation, bonus day, short-term military leave, jury duty, or a death in the family as covered by

that policy, you will be paid for the holiday. If you are absent due to sickness, you will be paid for the holiday if you provide the Medical Department with a doctor's note stating the reason for absence.

Birthday Holiday:

You must be an employee of Franklin Mint Corporation on your birthday to be eligible for the holiday in that calendar year. You may not take the birthday holiday prior to the actual date of your birthday. You must take your personal day within the twelve-month period after the actual birthday, or forfeit the day off.

You may take a personal day in lieu of your birthday under the following circumstances:

- Your birthday falls on a weekend or holiday.
- You obtain your supervisor's permission one week in advance of the proposed holiday.

Weekend Holidays:

Holidays falling on a Sunday will be observed on the following Monday. Holidays falling on a Saturday will be observed on the preceding Friday.

Holiday Pay:

All eligible Franklin Mint employees are paid one day's pay at their regular rate for company designated holidays.

If you are on an authorized leave of absence or on layoff for not more than one week prior to the day on which the holiday occurs, you will be paid for the holiday. If your leave is for medical reasons and you are entitled to short-term disability benefits, you will not receive those benefits for the holiday.

Holidays Worked:

All eligible non-exempt employees who work on a company designated holiday will receive their holiday pay plus double time for all hours worked on that day.

Holidays During Vacation:

All eligible employees who take their vacation during the week in which a company designated holiday is observed may take an additional day to compensate for the holiday. You must notify your supervisor one week prior to the first day of your vacation.

You must work the scheduled workday preceding your first day of vacation and the scheduled workday following your vacation to be eligible for holiday pay if the holiday is observed during your vacation.

However, if you are absent on the scheduled workday preceding or following the vacation due to a bonus day, short-term military leave, jury duty or a death in the family as covered by that policy, you will be paid for the holiday. If you are absent due to sickness you will be paid for the holiday if you were under a doctor's care and provide the Medical Department with a doctor's note stating the reason for your absence.

Vacation:

The company grants an annual vacation with pay to all regular full-time and part-time employees who have completed specified eligibility requirements. The term "vacation year" is the twelve-month period commencing 1 January of any year and ending 31 December. Employees earn a certain number of vacation days a year to be taken as follows:

During the first year of employment, full-time regular employees . . .

— whose hire date is between 1 January and the first workday of May will be entitled to one week's vacation, to be taken at any time commencing 1 July of that year.

— whose hire date is after the first workday of May and before 1 November, will be entitled to two week's vacation, to be taken at any time commencing 1 January of the following year.

— who join the company in November or December may take one week's vacation the following year.

Full-time regular employees in their second through fourth years of employment may take two week's vacation.

Full-time regular employees who complete five years at any time during the year will be entitled to three week's vacation, as follows:

- If the five-year anniversary falls before 1 July, you may take your third week any time during that year, with 30 days advance request.
- If the five-year anniversary falls after 1 July, you may take your third week only during the second half of the year, again with 30 days advance request.

Full-time regular employees who complete ten years of service at anytime during the year will be entitled to four weeks of vacation as follows:

- If the ten-year anniversary falls before 1 July, you may take your fourth week any time during that year with 30 days advance request.
- If the ten-year anniversary falls after 1 July, you may take your fourth week only during the second half of the year, again with 30-day's advance request.

Full-time regular employees with more than ten years of service may take four week's vacation annually.

Part-time employees must work the following number of hours before 31 December to qualify for vacation in the following year:

VACATION HOURS

Hours Worked	After 1 yr.	After 5 yrs.	After 10 Yrs.
1,720+	64	96	128
1,520 to 1,719	56	84	112
1,360 to 1,519	48	72	96
1,180 to 1,359	40	60	80
1,000 to 1,179	32	48	64

Vacation Scheduling:

You must schedule your vacation with the approval of your supervisor. Vacations are scheduled on the basis of company seniority and production requirements. Final decision with respect to vacation of any employee will rest with management. Vacations will be granted subject to department requirements for the services of the employees.

Vacation Postponement:

If you are not able to take your vacation because of work requirements, you may postpone a maximum of one week of your vacation until the following vacation year with the approval of your supervisor and the Personnel Department. You must take at least one week of your vacation each year.

You can carry over into the following year no more than one week of vacation, no matter how much of your vacation is unused at the end of the calendar year and no matter how much vacation time you are eligible for.

Rescheduling of Vacation

If you are granted an authorized disability leave of absence during your vacation, you will be permitted to re-schedule the vacation days lost as a result of the disability or receive vacation pay for the days lost.

In the event a death occurs in your immediate family while on vacation, the death-in-family absence policy will apply. Your interrupted vacation may be re-scheduled for an additional period equal to the number of working days with the approval of your supervisor and the Personnel Department.

Vacation Pay:

All Franklin Mint employees receive their regular pay rate in effect at the time the vacation is taken. If you are bumped or transferred to a lower paying job, you may request and be paid vacation pay at the highest rate you attained in the 26 weeks immediately preceeding the date the vacation is scheduled to

begin. This does not apply if you were demoted for poor performance in the higher paying job, or if you received a temporary increase.

Pay In Lieu of Vacation:

You may receive pay in lieu of vacation under the following conditions:

- When scheduling demands prevent you from taking your vacation at a time mutually satisfactory to you and your supervisor.
- If your services are needed during critical periods, you may be granted pay in lieu of vacation time for all but one week of the current year's vacation. You must take one week of your current year's vacation, and will be paid in lieu of vacation for the unused balance. This practice is limited, and is limited to situations where demands are great.

Requests for pay in lieu of vacation must be approved by the head of your department and the Director of Personnel. Payment is made only at year end.

Leave of Absence:

No vacation monies will be paid to you during medical leaves. If you are on an approved medical leave of absence, your vacation time will continue to accrue credits as though you had been actively employed.

However, if you are on an educational leave of absence, you do not accrue vacation time. Upon returning to work from an authorized leave, you will be eligible for vacation time in proportion to the amount of time worked.

Holidays During Vacation:

If you take your vacation during the week in which a company designated holiday is observed, you will be given an additional vacation day to compensate for the holiday.

Bonus Day:

Non-exempt and hourly employees receive a bonus day (day off with full pay) for each continuous six months of perfect attendance. Perfect attendance is reporting to work on time and remaining there as scheduled. Any lost time other than approved vacation, holidays, jury duty, military leave, or death in the family as covered by policy will constitute an absence.

Bonus day eligibility begins with the first day of permanent employment. In the event of an absence, the six month eligibility requirement for a bonus day will begin with the date following the absence.

Bonus days can be accumulated to a maximum of five days.

Paid Sick Days:

Non-exempt and hourly full-time regular employees are eligible to receive one day's sick leave after each three months of service with the company beginning with the first day of employment. Unused sick days may be carried forward from one employment year to the next.

Eligible employees may accumulate sick days until retirement at which time they will be granted permission by the Director of Personnel to leave prior to their retirement date the equivalent number of accrued sick days.

Accrued sick days may be used to offset short and long-term disability. Upon leaving the company for any reason other than retirement, employees will not be paid for accrued sick days. Sick days may not be used for any reason other than illness. Abuse of sick leave is a serious offense and is subject to disciplinary action.

Death in Immediate Family:

Regular employees may be granted a day off with pay to attend the funeral of someone in their immediate family. Your immediate family includes your spouse, children, step-children, grandchildren, parents, grandparents, brothers, sisters, parents-in-law, brothers and sisters-in law.

If you were raised by persons other than your parents, you may also be granted a day off with pay when your guardians die. Approval for paid time off in these instances must be obtained from the Director of Personnel.

If you are responsible for funeral arrangements, or if travel time is needed to attend the funeral, you may be granted two further consecutive additional paid days off.

Approval for paid time off in addition to the one day must be obtained from the Director of Personnel.

Leaves of Absence:

A leave of absence (LOA) is a formally authorized period away from the job for more than five days, without pay, but accompanied by preferential treatment for reinstatement on return, without loss of seniority.

There are various types of leaves for which an employee may apply:

- Medical
- Maternity
- Jury Duty
- Annual Military Duty
- Extended Military Duty
- Educational
- Personal
- Long-Term Disability

Medical Leave of Absence:

The company recognizes that an illness or injury may arise which would cause employees to be absent from work for more than five days. In these cases, you may apply for a medical leave of absence.

Regular full and part time Franklin Mint employees who have completed 60 calendar days of service are eligible to apply for a medical leave of absence.

A medical leave of absence shall not exceed 26 weeks.

When the need for a medical leave of absence arises, you must:

- Notify your supervisor and the Medical Department immediately.
- Complete an application for leave of absence form.
- Provide the Medical Department with a statement of disability form properly completed by your attending physician as soon as possible.
- Provide the Medical Department with an updated statement of disability form from your attending physician every 15 calendar days during the entire period of leave.

It is the responsibility of the Medical Department to review the application for a leave due to illness or injury. Based on documentation received from the attending physician, they can approve the leave initially for up to 30 days. Extensions of leave time beyond the first 30 calendar days require narrative documentation from the employee's doctor and examinations by the company physician as frequently as every two weeks. The Medical Department reserves the right to request additional information in situations where they feel an employee is able to work and has not yet returned from a leave. Where the opinions of the company physician and the employee's doctor differ, an examination by a third party doctor can be required, the cost to be born by the company.

If leave time is not approved by the Medical Department, eligibility for benefit programs is ended for the involved employee and no re-instatement rights are guaranteed.

Benefits Eligibility During Medical Leaves:

Vacation — Credits will continue to accrue as if active employment was continuing. Vacation monies will not be paid during approved Medical Leaves.

Medical & Dental Plan Coverage — For employees on approved Medical Leaves will continue as if active employment was continuing. Benefits of this plan may be payable during Medical Leaves provided all eligibility requirements are met.

Long-Term Disability, and Life Insurance Coverage — For employees on approved Medical Leaves will continue as if active employment was continuing.

Holiday — Monies will be paid to employees on approved Medical Leaves if the holiday falls during the first five work days of the leave period.

Retirement Plan — Participation will be suspended during approved Medical Leaves. No benefits will accrue during this time, but no previously earned benefits will be lost.

Productivity Sharing Plan — Participation will be suspended during approved Medical Leaves. No shares will accrue during this time, but no previously earned shares will be lost. If a payout day occurs during the leave period, payment for shares previously accumulated will be made.

Medical Leave Re-Employment:

When an employee on an approved Medical Leave is ready to return to work the Medical Department must be notified. The Medical Department will require a written release from the attending physician which states that the employee is capable of returning to work. The Medical Department will review the employee's health status before granting approval for the return to work. Once the Medical Department has granted return to work approval, the employee must report to the Personnel Department. For employees covered by a Seniority Policy, re-instatement will follow the applicable policy. For employees not covered by a Seniority Policy, re-instatement rights are as follows:

- For employees with *less than one year of service*, there is no guarantee that the original position will be available. However, the company will reassign the employee to the original position if it is available or to any other open position for which the employee is suited. In the event no position is available, the employee will be terminated.
- For employees with *more than one year of service, but less than five*, the original position will be held for a period of 60 calendar days. After that 60 day period, there is no guarantee that the original position will be available. The company will reassign the employee to the original position if it is available or to any other open

position for which the employee is suited. In the event no position is available, the employee will be terminated.

- For employees with *more than five years of service*, the original position will be held for a period of 90 calendar days. After that 90 day period, there is no guarantee that the original position will be available. The company will reassign the employee to the original position if it is available, or to any other position for which the employee is suited. In the event no position is available, the employee will be terminated.

Maternity Leave of Absence:

Regular full and part time employees who are pregnant are eligible to apply for a Maternity Leave of Absence. A maternity leave shall not exceed 26 weeks.

As soon as an employee knows of her pregnancy, she should notify the Medical Department. Before the beginning of the fifth month of pregnancy, she must notify her supervisor and she must also provide the Medical Department with a certificate from the attending physician indicating the expected date of delivery, specific work restrictions if any, and the date the doctor recommends the leave begin. If the attending physician changes any of this information during the pregnancy, another certificate must be given to the Medical Department.

Benefits Eligibility During Maternity Leaves:

Vacation — Credits will continue to accrue as if active employment was continuing. Vacation monies will not be paid during approved Maternity Leaves.

Medical & Dental Plan Coverage — For employees on approved Maternity Leaves will continue as if active employment was continuing. Benefits of this plan may be payable during Maternity Leaves provided all eligibility requirements are met.

Long-Term Disability and Life Insurance Coverage — For employees on approved Maternity Leaves will continue as if active employment was continuing.

Holiday — Monies will be paid to employees on approved Maternity Leaves if the holiday falls during the first five work days of the leave period.

Retirement Plan — Participation will be suspended during approved Maternity Leaves. No benefits will accrue during this time, but no previously earned benefits will be lost.

Productivity Sharing Plan — Participation will be suspended during approved Maternity Leaves. No shares will accrue during this time, but no previously earned shares will be lost. If a payout day occurs during the leave period, payment for shares previously accumulated will be made.

Maternity Leave Re-Employment:

When an employee on an approved Maternity Leave is ready to return to work the Medical Department must be notified. The Medical Department will require a written release from the attending physician which states that the employee is capable of returning to work. The Medical Department will review the employee's health status before granting approval for the return to work. Once the Medical Department has granted return to work approval, the employee must report to the Personnel Department. For employees covered by a Seniority Policy, re-instatement will follow the applicable policy. For employees not covered by a Seniority Policy, re-instatement rights are as follows:

- For employees with *less than one year of service*, there is no guarantee that the original position will be available. However, the company will reassign the employee to the original position if it is available or to any other open position for which the employee is suited. In the event no position is available, the employee will be terminated.
- For employees with *more than one year of service, but less than five*, the original position will be held for a period of 60 calendar days. After that 60 day period there is no guarantee that the original position will be available. The company will reassign the employee to the original position if it is available or to any other open

position for which the employee is suited. In the event no position is available, the employee will be terminated.

Jury Duty Leave of Absence:

All regular Franklin Mint employees who are called for jury duty will be granted a leave of absence for the full term of jury duty. The company will reimburse these employees the difference between jury pay and their normal earnings.

When a subpoena for jury duty is received, employees must:

- Notify their supervisor and the Personnel Department immediately.
- Give a copy of the subpoena to their supervisor who will forward it to the Personnel Department.

An employee on a Jury Duty Leave of Absence will continue eligibility for all benefit programs as if active employment was continuing. If a company holiday falls during the jury duty assignment, employees will receive holiday pay.

Salary Payments During Jury Duty Leave:

No salary payments are made during a Jury Duty Absence unless the employee obtains a certificate from the court stating the amount of money which will be paid for the jury assignment. The certificate should be forwarded to Personnel where arrangements will be made to pay the difference due the employee on regularly scheduled paydays.

Jury Duty Leave Re-Employment:

Upon return from Jury Duty Leave, you must report to the Personnel Department and present a copy of the pay voucher issued by the Court. The pay voucher will be forwarded to the Payroll Department where the proper pay adjustment will be made.

Annual Military Duty Leave of Absence:

If a regular employee is a member of the Armed Forces (Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, and all reserve branches of these units) and is required to attend an annual military training assignment, an Annual Military Duty Leave will be granted. The company will reimburse these employees the difference between the military pay received and their normal earnings for a maximum of 10 days. Military pay includes base pay received plus any hazardous duty pay, but excludes allowances for travel, quarters, and dependents.

An employee on an Annual Military Leave will continue eligibility for all benefit programs as if active employment was continuing. If a company holiday, falls during the leave, employees will receive holiday pay.

Salary Payments During Annual Military Leave:

No salary payments are made during an Annual Military Leave.

Annual Military Duty Leave Re-Employment:

Upon return from Annual Military Duty Leave, employees must report to Personnel and present a copy of the pay voucher issued by the military. The pay voucher will be forwarded to the Payroll Department where the proper pay adjustment will be made.

Extended Military Duty Leave of Absence:

Any regular full-time employee who enlists in a branch of the Armed Forces will be granted an Extended Military Leave of Absence without pay for the period of time equal to the initial military obligation.

Benefits Eligibility During Extended Military Leaves:

Vacation — Payments would be made for an unused current year's vacation entitlement.

Medical & Dental Plan Coverage — Would terminate 31 days following the beginning of the leave.

Short Term Disability Plan Coverage — Terminates on the day the leave begins.

Long Term Disability and Life Insurance Coverage — Terminates on the day the leave begins.

Holiday — Payments would be made for any holiday following during the first five work days of the leave period.

Retirement Plan — Participation will be suspended. No benefits will accrue during this time, but no previously earned benefits will be lost.

Productivity Sharing Plan — Participation will be suspended. No shares will accrue during this time, but no previously earned shares will be lost. If the payout for the year in which the leave period begins has not yet been made, the employee would be eligible to receive payment for shares previously accumulated when the fund is distributed. No other payments would be made until after the employee returned to work.

Extended Military Duty Leave Re-Employment:

A returning employee must apply for reinstatement within 15 calendar days of his or her release from the service. You must supply a form DD214 to the Personnel Department showing that you have completed your service in a satisfactory manner. If you are still qualified for the position you previously held at Franklin Mint, you will be re-instated to that job provided reinstatement does not conflict with any applicable Seniority Policy.

If you are unable to qualify for the former position because of a service related disability, you will be re-instated to another job which you can perform, but which may not be of the same pay status.

Educational Leave of Absence:

The company recognized the value of advanced professional degrees and grants a one-year Educational Leave of Absence without pay to eligible employees.

Regular full-time employees who have completed at least 12 months of service with the company are eligible to apply for an educational leave provided they:

- Hold a bachelors or a masters degree and are one year from their masters or doctorle degree, and
- Are enrolled in a course of study related to the interest of the company.

An educational leave shall not exceed one academic year. Approval of an educational leave must be obtained from the Director of Personnel at least three months before the leave is to begin.

Benefits Eligibility During Educational Leaves:

Vacation — Payments would be made for any unused current year's vacation entitlement.

Medical and Dental Plan Coverage — Would terminate 31 days following the beginning of the leave.

Short Term Disability and Life Insurance Coverage — Terminates 31 days after the leave begins.

Holiday — Payments would be made for any holiday falling during the first five work days of the leave period.

Retirement Plan — Participation will be suspended. No benefits will accrue during this time, but no previously earned benefits will be lost.

Productivity Sharing Plan — Participation will be suspended. No shares will accrue during this time, but no previously earned shares will be lost. If a payout day occurs during the leave period, payment for shares previously accumulated will be made.

Educational Leave Re-Employment:

An employee returning from an Educational Leave will be re-instated to the position previously held if it is available provided re-instatement does not conflict with any applicable Seniority Policy. If the original position is not available, the Personnel Department will assign you to another position for which you are qualified.

In the event no suitable position is available, you will be terminated.

Personal Leave of Absence:

In cases of extreme personal need, the company may grant a personal leave of absence without pay to eligible employees.

Regular full or part-time employees who have completed one full year of service are eligible to apply for a personal leave of absence not to exceed 30 calendar days. Approval of a personal leave must be obtained from the Director of Personnel at least 10 work days before the leave is to begin.

No personal leaves will be granted unless all current year vacation time has been used by the employee.

An employee on a personal leave of absence will continue eligibility for all benefit programs as if active employment was continuing. However, holiday payments during the leave period will only be made if the holiday falls during the first five work days of the leave period.

Personal Leave Re-Employment:

Upon return from a Personal Leave, you must report to the Personnel Department so that paperwork can be initiated to put you back on the Payroll. Personnel will reassign you to your original position if available provided re-instatement does not conflict with any applicable Seniority Policy. If your original position is not available, you will be assigned to another open position for which you qualify. In the event no suitable position is available, you will be terminated.

Long-Term Disability Leave of Absence:

If an eligible employee remains disabled and unable to work for more than twenty-six weeks, a Long-Term Disability (LTD) Leave will be granted. Approval for LTD leaves is determined by the Medical Department initially. Once Medical has determined the need for additional time off beyond the medical leave maximum of 26 weeks, application can then be made for LTD benefits (see Long-Term Disability Insurance Plan) to the Prudential Insurance Company who will subsequently monitor continued absence.

Approval for LTD leave time will continue as Long as LTD insurance benefits are payable. Initially, the leave will be approved based on evidence that you are unable to perform the duties of your particular job due to illness or injury. LTD benefits can continue for up to 24 months (2 years) if you remain unable to do your job.

After that period, benefits can be continued only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fitted by education, training, or experience. If it is determined that you are unable to work at all, benefits will continue, and so will approval for LTD leave. Approval for LTD leave time will be withdrawn when benefits are no longer payable.

Benefits During Long-Term Disability Leaves:

Vacation — Payments would be made for any unused vacation entitlement. Pro-rata vacation monies will also be paid.

Medical & Dental Plan Coverage — Will continue as if active employment was continuing. However, in the event the disability becomes eligible for coverage by Medicare, our plan will become secondary coverage.

Life Insurance — Coverage will continue as if active employment was continuing.

Retirement Plan — Participation will be suspended during approved LTD leaves. No benefits will accrue during this time, but no previously earned benefits will be lost.

Productivity Sharing Plan — Participation will be suspended during approved LTD leaves. No shares will accrue during this time, but no previously earned shares will be lost. Eligibility for payouts during an LTD leave is limited to those payouts made for the year in which the LTD leave began. No further payouts would be made unless you returned to work.

Long-Term Disability Leave Re-Employment:

Once it has been determined that an employee on LTD leave has recovered and is able to return to work, the Medical Department will review the employee's health status and advise Personnel of the date on which the employee can return to work. For employees covered by a Seniority Policy, re-instatement will follow the applicable policy provided there are no medical restrictions. For employees not covered by a Seniority Policy, there is no guarantee that any position will be available. The company will assign the employee to any open position for which the employee is suited. In the event no position is available, the employee will be terminated.

INCOME SECURITY ACT OF 1974

ERISA:

The Employees Retirement Income Security Act of 1974, more commonly known by its initials, ERISA became law on Labor Day, 1974. In general ERISA sets guidelines for employee programs which provide benefits in cases of illness, death, and retirement. Participants of these plans are entitled to certain rights and protections under the law. ERISA provides that all participants shall be entitled to:

- Examine, without charge, at the Plan Administrator's office and at other locations, all plan documents, including insurance contracts, collective bargaining agreements, and copies of all documents filed by the plan with the United States Department of Labor, such as annual reports and plan descriptions.
- Obtain copies of all plan documents and other plan information upon written request to the plan administrator. The administrator is allowed to charge for any copy you request. There will be a charge of five cents (5¢) per page for any copies you request.
- Receive a summary of the plan's annual financial report. The plan administrator is required by the law to furnish each plan participant with a copy of this summary financial report each year by the 15th of September.
- File suit in a federal court, if any materials requested are not received within 30 days of the participant's written request, unless the materials were not sent because of matters beyond the control of the administrator. The court may require the plan administrator to pay up to $100 for each day's delay until the materials are received.

In addition to creating rights for plan participants, ERISA imposes obligations upon the persons who are responsible for the operation of each employee benefit plan. These persons are referred to as "fiduciaries".

Fiduciaries must act solely in the interest of the plan participants and they must be prudent when carrying out their

plan duties. Fiduciaries who violate ERISA may be removed and required to make good any losses they have caused the plan.

ERISA prohibits the discharge of or discrimination against a plan participant to prevent that participant from obtaining a benefit or exercising his/her rights under ERISA. If you are improperly denied a benefit in full or in part, you have a right to file suit in a federal court or in a state court. If the plan fiduciaries are misusing plan monies, you have a right to file suit in a federal court or request assistance from the U.S. Department of Labor. If you are successful in your suit, the court may, if it so decides, require the other party to pay your legal costs, including attorney's fees.

If you have questions about your rights under ERISA, you should contact the plan administrator or the nearest area office of the U.S. Labor Management Service Administration, Department of Labor.

Benefit plans provided by Franklin Mint Corporation which are covered by ERISA are:

- Franklin Mint Corporation Health & Dental Care Plan
- Short-term Disability Plan
- Long-term Disability Plan
- Group Life Insurance Plan
- Business Travel Accident Plan
- Franklin Mint Corporation Employees Retirement Plan

Each of these benefit plans is later described fully and identified in accordance with ERISA by a Plan Identification Number. If you decide to make an inquiry of the Department of Labor about any of these plans, you must include the appropriate Plan Identification Number. You will also need to state the Employer Identification Number (EIN) which has been assigned to Franklin Mint Corporation. In all instances the EIN is 231647880.

The official agent for service of legal process for the Franklin Mint Corporation benefit plans is the company's Legal Department. However, ERISA provides that the plan is properly served if the Corporation Benefits Office is served.

FRANKLIN MINT HEALTH AND DENTAL CARE PLAN

Plan Name:

FRANKLIN MINT HEALTH AND DENTAL CARE PLAN

Plan Number:

504

Employer Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Plan Administrator:

BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
(215) 459-6864

Agent for Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Administration of This Plan:

This plan is fully self-insured by Franklin Mint Corporation. Only those benefits described in the plan of benefits supplied to the Administrative Services Only contract holder (Prudential) are payable under this plan. The plan is subject to review and revision by Franklin Mint Corporation.

Funding and Fiscal Year:

This plan is not funded in advance. Benefits of this plan are payable from the general assets of the Corporation. The plan is operated on a fiscal year of 1 January through 31 December.

An insurance policy is in force to reimburse the Corporation for plan benefits which exceed 110% of the amount which is anticipated to be paid out each year. This Stop Loss Insurance Policy is issued by Lloyds of London.

Employees Covered by the Plan:

All full-time regular employees who are either:

- Located in the United States, or
- United States citizens and are expatriated to a foreign location are covered by the Health and Dental Care Plan.

However, if any of these employees are covered by a collective bargaining agreement, the terms of that agreement must include coverage by this plan for the insurance to be in force. There is a 60-day waiting period following hire date for eligibility in this plan.

This plan also covers certain dependents of eligible employees. Eligible dependents are your spouse (unless separated) and your unmarried children less than 19 years old. Step-children, foster children, and legally adopted children can be considered eligible dependents provided they depend upon you for support and maintenance.

Unmarried children age 19 to 23 are also eligible provided they depend wholly upon you for their support and maintenance, and are full-time students in an educational institution.

Unmarried children, regardless of age, may continue participation in this plan provided they remain *totally* dependant upon you for support and maintenance for reasons of physical or mental health problems.

No one will be eligible as a dependent while covered as an employee or while in military service. An unmarried child who reaches age 19 and no longer qualifies as an eligible dependent cannot subsequently be covered by this plan as a dependent.

Plan Benefits:

The Health and Dental Care Plan provides benefits to eligible employees when covered medical and dental expenses are incurred. Coverage begins when an employee completes the waiting period, continues during emloyment, and for the 31 days following an effective date of termination.

Health Plan Coverage Provisions:

The benefits of this plan are payable when health care expenses are incurred by an eligible employee or dependent as a result of a non-occupational injury or illness. Separate coverage schedules are listed here for:

- In-hospital confinement expenses
- Physician's visits expenses during hospital confinement
- Diagnostic x-ray and lab expenses
- Supplemental accident expenses
- Major medical expenses
- Out-patient psychiatric care expenses
- Surgical procedures expenses
- Maternity expenses
- Convalescent nursing home care expenses

In-Hospital Confinement:

Benefits of this plan are payble at 100% of the reasonable and customary charges for a semi-private room and all services and supplies incurred during the first 120 days of any one period of hospital confinement. Personal services such as telephones or televisions are not covered by the plan. If confinement is in a private room, the daily benefit will not exceed the hospitals' standard semi-private room rate. If the hospital does not have semi-private rooms, the benefit limit is 80% of the daily charge for its lowest rate private room. Charges incurred after 120 days will be covered by Major Medical benefits.

Separate confinements will be considered related and treated as one period of confinement if the cause is the same and complete recovery from the illness did not occur between confinements.

Physical Visits During Hospital Confinement:

Benefits of this plan are payable at 100% of the reasonable and customary charges made by a physician for daily visits during the first 120 days of any one period of hospital confinement. If the hospital confinement is caused or contributed to by pregnancy no coverage for daily visits is provided. If a surgical procedure is performed during a hospital confinement, no coverage for a visit on the day of surgery or subsequently during the confinement is provided. In no instance will more than one visit per day of hospital confinement be covered for benefits. Charges incurred after 120 days will be covered by Major Medical benefits.

Diagnostic X-ray and Lab Tests:

Benefits of this plan are payable in full for the first $100.00 of charges incurred because of X-ray or laboratory examinations made solely for diagnosis of a sickness in any plan year. Expenses in excess of $100.00 will be covered by Major Medical benefits. An X-ray or laboratory exam done in connection with pregnancy except pregnancy tests is not covered by these benefits.

Supplemental Accident Benefits:

Benefits of this plan are payable in full for the first $300.00 of charges incurred because of injuries sustained in a non-occupational accident provided the charges are made for services and supplies ordered by a physician and are furnished within the 90 day period beginning with the date the injuries are sustained.

Major Medical Expenses:

Benefits of this plan are payable for expenses incurred because of an illness which are not covered by other aspects of the plan. These expenses are subject to an annual deductible of $75.00 per person or $150.00 per family. After the deductible is satisfied, benefits are paid at 80% of such charges.

Eligible charges for Major Medical coverage are:

- Hospital room and board, services and supplies when confinement exceeds 120 days.
- Physician daily visits during hospital confinement when confinement exceeds 120 days.
- Ambulance service for local travel.
- Private duty professional nursing services by a registered graduate nurse other than a close relative.
- Private duty professional nursing services provided by a person who is not a registered graduate nurse or a close relative when a physician certifies that such services are necessary.
- Restoratory or rehabilatory speech therapy by a qualified speech therapist other than a close relative, if the therapy is for speech loss or impairment due to an illness other than a functional nervous disorder, or to surgery on account of the illness. In the event the loss or impairment is due to a congenital anomaly, surgery to correct such anomaly must have been performed prior to the therapy.
- Surgical dressings.
- Blood and blood plasma which is not replaced.
- Artificial limbs, larynx, and eyes.
- Electronic heart pacemakers.
- Casts, splints, trusses, braces, and crutches.
- Drugs and medicines ordered by a physician and dispensed by a licensed pharmacist.
- Oxygen and rental of equipment for its administration.
- Treatment by a physiotherapist other than a close relative.

- Rental of wheelchairs, hospital beds, or iron lungs.
- Treatments by X-ray, radium or other radioactive substances.

Out Patient Psychiatric Care:

Benefits are payable at a rate of 50% of charges incurred for physicians' services in connection with mental illness or functional nervous disorders. The maximum Reasonable & Customary charge recognized is $40. per visit. These charges are subject to the Major Medical deductible each year, and the initial five visits in a year will be considered under the 80% benefit rate. In each plan year, only 50 visits are eligible for coverage.

Surgical Procedures Expenses:

Benefits are payable at 100% of reasonable and customary charges for physicians' services in connection with the performance of a surgical procedure. "Surgical procedure" means cutting, suturing, treatment of burns, correction of a fracture, reduction of a dislocation, manipulation of a joint under general anesthesia, electrocauterization, tapping (paracentesis), application of plaster casts, administration of pneumothorax, and endoscopy or injection of sclerosing solution. Charges for a procedure performed in connection with pregnancy or for treatment of accidental injury to the natural teeth is not covered by these benefits. Physicians' services in connection with the performance of a surgical procedure are defined as:

- The immediate pre-operative examination by the physician performing the procedure.—
- The actual performance of the procedure by a physician.
- Assistance in the actual performance of the procedure, if the type and complexity of the procedure or the condition of the person on whom it is performed requires such assistance.
- The post-operative care required by and directly related to the procedure.

Maternity Expenses:

Benefits are payable at 100% of reasonable and customary charges for maternity and newborn expenses provided the pregnancy commences while the plan is in effect for the individual. Maternity and newborn expenses are defined as ordered by a physician and:

- An obstetrical procedure performed by a physician.
- Hospital room and board, services and supplies.
- An anesthetic and its administration, when given in the hospital and charged for by a physician.
- Ambulance service for local travel for transportation to the hospital.
- Services and supplies furnished by the hospital for routine nursery care of the newborn child or children.
- The first visit for routine care of the child or children made in the hospital by a physician other than the physician who delivered such child or children.
- All other services and supplies which are ordered by a physician and furnished in connection with the pregnancy except the test to determine pregnancy.

Convalescent Nursing Home Care Expenses:

Benefits are payable if confinement in a convalescent nursing home is ordered by a physician, provided all of the following conditions are met:

- The person was confined in a hospital for at least five consecutive days.
- The convalescent nursing home care is ordered by the physician for convalescence from a condition which caused such hospital confinement, or from a related condition which commences within seven days after discharge from such hospital confinement, or within seven days after a related convalescent nursing home confinement. The person is under the continuous care of the physician.

- Twenty-four hour a day nursing care of the person is essential, as certified by his or her physician.

Eligible convalescent nursing home expenses are room and board, including regular daily services and supplies furnished by the convalescent nursing home. Professional medical services are not covered by these benefits. The charges are subject to the Major Medical deductible each year. Benefits are payable at a rate of 80% of the charges incurred for a maximum of 60 days. However, in no instance will the amount exceed a daily limit equal to 50% of the standard semi-private daily room rate in the last hospital in which the person was confined.

Separate convalescent nursing home confinements of a person will be considered related and treated as one period of confinement unless:

- The later confinement begins after complete recovery from the illness causing the earlier confinement, or
- The later confinement results from causes entirely unrelated to the causes.

Maximum Benefit:

The lifetime benefit available under this Health Care Plan is $1,000,000 per peson. A separate maximum exists for the treatment of mental illness or functional nervous disorders. The lifetime maximum for these charges is $20,000.

Each year, until age 65 at the beginning of a benefit year, each person's remaining lifetime benefit amount is reviewed. An automatic re-instatement of previously used portions of individual maximums occurs, but never more than $1,000 each year.

Plan Exclusions and Limitations:

Charges not eligible under the Health Care Plan are listed below:

- Any amount in excess of the reasonable and customary charge for an eligible service.
- Any charges incurred in connection with remedying a condition by means of cosmetic surgery unless such

condition is the result of accidental injuries sustained while the person is covered by the plan.

- Any charges incurred in connection with an illness due to war or an act of war. "War" means declared or undeclared war and includes resistance to armed aggression.
- Any charges incurred for any examinations to determine the need for, or the proper adjustment of, hearing aids.
- Any charges incurred in connection with an injury or illness arising out of, or in the course of, any employment for wage or profit or, with respect to such employment, by any workmen's compenstion law, occupational disease law or similar legislation.
- Any charges of or services or supplies furnished by or on behalf of the United States Government or any other government.
- Any charges for any service or supply not reasonably necessary for the medical care of the person's illness or injury.
- Any charges for "check-ups", including screening, routine physical examinations, and research studies, not reasonably necessary to the treatment of illness or injury.
- Any charges for physician's services or X-ray examinations in connection with mouth conditions due to periodontal or periapical disease, or involving any of the teeth, their surrounding tissue or structure, the alveolar process or the gingival tissue.
- Any charges for physician's services in connection with weak, strained, or flat feet, any instability or imbalance of the foot, or any metatarsalgia or bunion.
- Any charges for physician's services in connection with corns, calluses, or toenails.
- Any charges for physician's services in connection with eye refractions or any other examinations to determine the need for, or the proper adjustment of, eye glasses.

Procedure for Filing Health Care Plan Claims:

If an eligible employee, or an eligible family member, requires medical treatment that is covered by the plan, a claim form mst be properly completed and submitted to the Benefits Office before any benefit is paid. Claim forms can be obtained from the Benefits Office.

Basically, there are two different types of claim forms:

- *Yellow*—Use this form to claim benefits for any eligible expenses incurred at a hospital.
- *Blue*—Use this form to claim benefits for any eligible expenses incurred outside a hospital.

The Employee's statement on each of these forms is the same. All questions must be answered, and the form must be signed by the employee. If the employee is not the person who incurred the expenses, then the patient must also sign the certification. The last signature line on the Employee's Statement permits the employee to authorize payment of benefits directly to the provider of the medical services. If this authorization is signed by the employee, the benefits will be mailed directly to the physician or hospital. The employee would receive a copy of the payment. If this authorization is not signed, benefits will be mailed directly to the employee.

Part 2 of the forms is to be completed by the appropriate hospital or doctor. The forms are then to be mailed to the Benefits Office where the insurance clerk will verify that coverage for the claimant is in force and forward the form to Prudential for benefit determination. Payments and/or copies of payments should be received by the employee at his or her home address within three weeks of the form being received in the Benefits Office.

A third claim form is available. The Medical Record Expense Envelopes are available to use in keeping a record of expenses eligible under the Major Meical program. The top section of the envelope is identical to the claim forms and must be completed and signed by the employee. Space is provided so that bills can be itemized and then kept in the envelope. Once

an individual has exceeded the deductible amount, the envelope can be forwarded to the Benefits Office. If preferred, envelopes can be forwarded at year-end before the new deductible period begins. All bills placed in the envelope must clearly state the date of the charge, the nature of the treatment (such as "prescription drug for cold", or "doctor's office visit for stomachache"), who provided the treatment, and the patient's name. Cancelled checks will not be accepted as proof of an eligible expense.

Method of Payment for Benefits:

Benefits of the Health Care Plan are payable to the employee. However, benefits may be paid directly to the medical service provided if the employee authorizes this direct payment in writing on the claim form or envelope.

Benefits for eligible services are payable when the properly completed claim form and bills are received by the insurance company.

Termination of Health Care Plan Benefits:

Plan participation for eligible employees and their dependents will cease 31 days after termination of employment.

Extension of Health Care Plan Benefits:

If the Health Plan for you or a dependent is terminated, the protection will be extended to cover certain expenses after the last date of coverage if both of the following conditions are met:

- The individual incurring the expenses must have been totally disabled by illness or injury at the time the coverage terminated.
- The expenses incurred after the date coverage terminated must be in connection with the illness or injury which caused the total disability.

If both of these conditions are met, eligible expenses incurred because of this specific illness or injury will be covered. Expenses incurred for any other illness or injury will not be covered.

In cases of pregnancy, maternity benefits will be available if the pregnancy commenced prior to the termination of coverage date. No other benefits of the plan will be extended.

Conversion Privileges:

Any individual whose participation in this Plan is terminating may request Prudential to provide medical expense coverage on an individual policy basis. To be eligible for conversion, the individual must have been covered under the Health Care plan for at least three months, and make application for conversion within 31 days of termination.

The benefits of the conversion policy are limited as follows:

- Maximum Hospital Room & Board Daily Benefit — $40.
- Maximum Duration of Benefit — 70 Days.
- Maximum miscellaneous Hospital Expense Benefits — $400.
- Maximum Surgical Benefits — $500.
- No Maternity Benefits.

Conversion application forms will be given to an eligible person at the time of termination.

Dental Plan Coverage Provisions:

You may choose any licensed dentist practicing within the scope of his profession.

The plan covers work included in a comprehensive list of dental services, divided into "basic services" and "major services". Some examples appear later. The plan also covers orthodontic treatment for a child age 19 or less.

Many dental conditions can properly be treated in more than one way. This plan is designed to help pay your dental expenses, but not on the basis of treatment that is more expensive than necessary for good dental care. If a condition is

being treated for which two or more services are suitable under customary dental practices, the benefit under the plan will be based on the least expensive of the services.

If a dental service is performed which is not listed in the list of services for which benefits are payable, but the list contains one or more other services that under customery dental practices are suitable for the condition being treated, then for the purpose of the plan, the least expensive of the suitable services listed will be considered to have been performed.

Benefits For Basic Dental Services:

These benefits are payable for the eligible charges incurred for basic dental services while covered by the plan.

During an individual's first benefit year, the plan will pay benefits at the rate of 60% of the eligible charges for basic dental services.

After the first benefit year, the percentage paid by the plan will increase as follows, provided the individual meets the requirement explained below:

BENEFIT YEAR	BENEFIT RATE
Second	70%
Third & thereafter	80%

To get the higher rate, the individual must have visited a dentist for examination and diagnosis at least once during the benefit year *prior to the one for which benefits are being claimed and have all the basic services recommended by the dentist completed by the end of that year*.

If during any benefit year an individual fails to meet the above requirement, the benefit rate for the next year will return to the original 60% level as though it were the first benefit year. The benefit rates in subsequent years will increase to the higher rate if the requirement is met.

Benefits for Major Dental Services:

These benefits are payable for the eligible charges incurred for major dental services while covered by the plan.

An individual must pay the first $50 of eligible charges for major dental services each year. After the annual $50 deductible is satisifed, the plan will pay 50% of the eligible charges the individual incurs for major dental services in excess of the deductible.

There is one exception to the annual deductible requirement for major services. Once the deductible has been satisified for major services included in a treatmen plan, no additional deductible will be required for that treatment plan even though it is not finished within the same benefit year.

Eligible Charges for Basic & Major Services:

An eligible charge is one the dentist makes for a covered basic or major dental service furnished to an individual covered by the plan, provided the service:

- Is in the list of dental services.
- Is part of a treatment plan which is the dentist's report that itemizes his recommended services, shows his charge for each service, and is accompanied by a supporting X-rays.
- Is not excluded by the plan provisions for charges not eligible for benefits.

The amount of the eligible charge for a covered service is equal to the charge made by the dentist, not to exceed the reasonable and customary, and also not to exceed $250 in the case of each separate item listed under major services.

A charge will be considered to be incurred on the date the service is received, rather than on the date the charge is made.

Pre-Determination of Benefits:

Eligible expenses incurred by you or a covered dependent are covered only when the dentist's proposed course of treatment ("Treatment Plan") has been submitted to an reviewed by

Prudential, and returned to the dentist showing the estimated benefits. No "Treatment Plan" need be submitted if the total charges do not exceed $100 or if emergency care is required.

A "Treatment Plan" is the dentist's report that:

- Itemizes his recommended services.
- Shows his charge for each service, and
- Is accompanied by supporting X-rays.

Pre-determination of benefits permits the review of the proposed treatment in advance and allows for resolution of any questions before, rather than after, the work has been done. Additionally, both you and the dentist will know in advance what is covered and what the Plan will pay, assuming you or the dependent remains covered.

Maximum Annual Benefit:

A maximum annual benefit of $600 applies separately to each employee and his/her covered dependent for all basic and major dental services received each calendar year.

Benefits for Orthodontic Services:

These benefits are payable for the eligible charges incurred for orthodontic treatment for a child age 19 or less who is covered by the Dental Plan.

The plan pays 50% of the eligible charges incurred after the orthodontics deductible, consisting of the first $50 of the charges, has been satisfied. The maximum lifetime benefit for orthodontal services is $500 per individual child.

Eligible orthodontic charges are those made to you for an orthodontic procedure that:

- Is an "Orthodontic Treatment Plan" that prior to the treatment has been reviewed by Prudential and returned to the dentist showing estimated benefits, and
- Is required by an overbite of at least four millimeters, crossbites, or protrusive or retrusive relationship of at least one cusp.

An "Orthodontic Treatment Plan" is a report on a form satisfactory to Prudential that among other things describes the recommended treatment, gives the estimated charge, and is accompanied by X-rays, study models, and other supporting evidence.

Plan Exclusions & Limitations:

Charges not eligible under dental or orthodontic plan are listed below:

- Anything not furnished by a dentist except X-rays ordered by a dentist, and services by a licensed dental hygienist under the dentist's supervision; anything not necessary or not customarily provided for dental care.
  - Furnished by or for the U.S. Government, or
  - Furnished by or for any other government unless payment is legally required, or
  - To the extent provided under any governmental program or law under which the individual is, or could be, covered.

- An appliance, or modification of one, where an impression was made before the patient was covered; a crown, bridge or gold restoration for which the tooth was prepared before the patient was covered; root canal therapy if the pulp chamber was opened before the patient was covered.
- A crown, gold restoration, or a denture or fixed bridge or addition of teeth to one, if the work involves a replacement or modification of a crown, gold restoration, denture or bridge installed less than five years before.
- A denture or fixed bridge involving replacement of teeth extracted before the individual was covered, unless it also replaces a tooth that is extracted while covered, and suth tooth was not an abutment for a denture or fixed bridge installed during the preceding five years.
- Services due to an accident related to employment or

disease covered under workman's compensation or similar law.

- Replacement of lost or stolen appliances; appliances or restorations for the purpose of splinting, or to increase vertical dimension or restore occlusion.
- Dental care of congenital or developmental malformation; services for cosmetic purposes unless made necessary by an accident occurring while covered. Facings on molar crowns or pontics are always considered cosmetic.
- Any portion of a charge for a service in excess of the reasonable and customary charge (the charge usually made by the provider when there is no insurance, not to exceed the prevailing charge in the area for dental care of a comparable nature, by a person of similar training and experience).
- Charges for an orthodontic procedure (straightening teeth) for which an active appliance was installed before the patient was covered.

Procedure for Filing Dental Care Plan Claims:

The claim procedure is so designated that if the estimated charge is more than $100, you and the dentist will clearly understand what the Plan will pay before the dental work is started. Another feature is that you may authorize direct payment to the dentist.

- Before you or a covered dependent goes to the dentist, get a claim form from the Benefits Office. Complete Part 1 and take the form to the dentist on the first visit. (If emergency treatment is required and you cannot get a claim form in advance, obtain the form and give it to the dentist as soon as you can.)
- If the estimated fee is more than $100:
  - Your dentist will determine what treatment should be given and will show on the claim form what he proposes to do. He will send the form to Franklin Mint Benefits Office.
  - The form will be returned to the dentist showing a

predetermination of the Plan's benefit and your portion of the fee. You will get a copy of this form.

- At this point you will have the opportunity to review the pre-determination of benefits with the dentist, and to decide whether any changes should be made in the treatment plan.
- Your dentist will proceed with the agreed-upon treatment and will submit the claim to Franklin Mint when the work is completed.

- If the estimated fee is $100 or less:
  - The dentist will proceed with the treatment without first sending the form to the Benefits Office.
  - When the work is completed, the dentist will send the form to the Benefits Office.

Method of Payment for Benefits:

Benefits of the Dental Care Plan are payable to the employee. However, benefits may be paid to the dentist if the employee authorizes this direct payment in writing on Part 4 of the Dental Care Plan Claim Form.

Benefits for basic and major services are payable when the claim form has been completed by the dentist indicating that the services have been completed. Benefits for Orthodontal services will be paid in equal installments beginning when the orthodontic appliances are first inserted, and quarterly thereafter for the estimated duration of the treatment plan, as long as the patient remains covered.

Termination of Dental Care Plan Benefits:

Plan participation for eligible employees and their dependents will cease 31 days after termination of employment.

Extension of Dental Care Plan Benefits:

If the Dental Plan for you or a dependent is terminated, the protection will be extended to cover the following dental care

received within the next 30 days, provided benefits would have been paid had the insurance remained in effect:

- An appliance, or modification of one, for which an impression was taken before termination.
- A crown, bridge or gold restoration for which the tooth was prepared before termination.
- Root canal therapy, provided the pulp chamber was opened before termination.

Conversion Privileges:

There are no conversion privileges for the Dental Care Plan.

Coordination of Health & Dental Care Plan Benefits With Other Plans:

The purpose of the Health & Dental Care Plan is to help meet actual expense. In line with that purpose our Plan contains a non-profit provision coordinating it with other plans under which an individual is covered so that the total benefits available will not exceed 100% of the allowable expense.

An "allowable expense" is any necessary, reasonable and customary expense covered, at least in part, by one of the plans.

"Plans" means these types of medical and dental care benefits:

- Coverage under a law or governmental program.
- Group insurance or other coverage for a group of individuals, including student coverage obtained through an educational institution above the high school level.

When a claim is made the primary plan pays its benefits without regard to any other plans. The secondary plans adjust their benefits so that the total benefits available will not exceed the allowable expense. No plan pays more than it would without the coordination provision.

A plan without a coordinating provision is always the primary plan. If all plans have such a provision:

- The plan covering the patient directly, rather than as an employee's dependent, is primary and the other secondary.
- If a child is covered under both parents' plans, the father's is primary.
- If neither of the above apply, the plan covering the patient longest is primary.

Coordination of Health & Dental Care Plan Benefits With Other Plans:

When our plan is the secondary plan and its payment is reduced to consider the primary plan's benefits, a record is kept of the reduction. This amount will be used to increase our plan's payments on the patient's later claims in the same calendar year — to the extent there are allowable expenses that would not otherwise be fully paid by our plan and the others.

How to Appeal a Claim:

If you have questions about a claim payment or denial, you should write to the Plan Administrator who will forward your inquiry directly to the office of the administrative service company which processed your claim. Continued problems or denials will be reviewed jointly by the Plan Administrator and the administrative services company.

GROUP LIFE INSURANCE

Plan Name:

FRANKLIN MINT CORPORATION
EMPLOYEES GROUP LIFE INSURANCE PLAN

Plan Number:

501

Employer Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Insurance Carrier:

THE PRUDENTIAL INSURANCE CO. OF AMERICA
FORT WASHINGTON, PA. 19380

Plan Administrator:

BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
(215) 459-6864

Agent for Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Administration of This Plan:

This plan is fully insured. No benefit is payable under the plan which is not payable under the applicable insurance contract. The plan is subject to the review and revision by either Franklin Mint Corporation or the insurance carrier.

Funding and Fiscal Year:

The funding method used for this plan is the insurance premium paid entirely by Franklin Mint Corporation to the insurance carrier. The policy is renewed every year on 1 January.

Employees Covered by the Plan:

All full-time, regular employees who are either:

- Located in the United States or
- United States citizens and are expatriated to a foreign location are covered by the Group Life Insurance Plan.

However, if any of these employees are covered by a collective bargaining agreement, the terms of that agreement must include coverage by this plan for the insurance to be in force. There is a 60-day following hire date waiting period for eligibility in this Plan.

Plan Provisions:

The Group Life Insurance Plan provides term life, and accidental death and dismemberment benefits to eligible employees. Coverage begins when an employee completes the waiting period and continues during employment and for 31 days following an effective date of termination.

Benefit Amount Payable:

If you die, your surviving beneficiary will receive an amount ranging from one to two times your annual base earnings:

If Annual Base Earnings Are:	You Have This Much Life Insurance:
Under $5,000	
$5,000 or more, but less than $6,000	$ 5,000
$6,000 or more, but less than $7,000	$ 7,000
$7,000 or more, but less than $8,000	$11,000
$8,000 or more, but less than $9,000	$14,000
$9,000 or more, but less than $10,000	$17,000
$10,000 or more	*TWICE* your annual base earnings, rounded to the lower thousand, to a maximum of $650,000.

If your death is a result of an accident, on or off the job, your beneficiary will also receive an Accidental Death Benefit equal to the basic insurance benefit described above.

If, as a result of an accident, on or off the job, you are dismembered, you will receive a Dismemberment Benefit according to the schedule below:

- For loss of two or more members . . . Benefit equals the amount of insurance.
- For loss of one member . . . Benefit equals one-half the amount of insurance.

Members are your hands, feet, and eyes. Loss of member means complete severance through or above the ankle or wrist, or the irrecoverable loss of the entire sight of an eye. The total benefit payable for all losses from any one accident may not exceed the full amount of life insurance. The loss must take place within 90 days after the accident for benefits to be payable.

When are Benefits Payable:

If you are dismembered or die while eligible for coverage, the benefit amount is payable when The Prudential Insurance Company of America receives written proof of the dismemberment or death. If you terminate employment with Franklin Mint Corporation or change to a classification of employment which is

not covered by this plan, and are dismembered or die within the 31 days following that termination and/or change in employee classification, the benefit amount is payable when the insurance carrier receives written proof of dismemberment or death, regardless of whether or not you applied for conversion during the 31 day conversion period.

Conversion Privilege:

If you cease to be a covered individual under this Plan, you may convert this insurance to an individual life insurance policy without evidence of insurability, provided you make written application and the first premium payment within 31 days of your termination date. The policy to which you can convert must conform to the following:

- *Amount* — May not exceed the amount of insurance provided under the group plan, nor be less than $2,000.
- *Form* — Any form of whole life insurance currently being offered by The Prudential Insurance Company of America, but not containing disability or other supplementary benefits.
- *Premium* — Will be based on the Prudential rate applicable to the form and amount of insurance for the individual applying for the policy.
- Effective Date — Will be the date at the end of the 31 day period of extension of benefits.

Conversion application forms will be given to an eligible person at the time of termination.

Plan Limitations and Exclusions:

Limiting age: full coverage under this plan will cease when an individual reaches the limiting age of 75. However, in cases of retirement and/or continued employment beyond age 75, participation will continue with the benefit amount reduced to one-fourth the value of the policy on the date of retirement or the individual's 75th birthday.

Accidental death benefits are not payable when death is due to:

- Suicide or self-inflicted injuries.
- Operating, learning to operate, or acting as a member of the crew of aircraft.
- Riding in any kind of aircraft except as a passenger on a regularly scheduled passenger flight of a commercial aircraft (aircraft includes rocket craft or any other vehicle, conveyance, or device designed for travel or other movement in or beyond the earth's atmosphere.
- Acts of war occuring within a war zone (war zones are defined as Vietnam, Laos, Cambodia — these war zones may change from time to time.)

Your Beneficiary:

Dismemberment benefits are paid directly to you.

Death benefits will be paid to the person designated by you in writing as the beneficiary to your Group Life Insurance Plan benefits. Forms for this designation are available in the Personnel Department.

This insurance is assignable as a gift assignment. If you wish to assign the benefits of this policy to a specific person or trust, please contact the Benefits Office.

Procedure for Filing Claims:

Notice of the dismemberment or death of any participant should be given to the Plan Administrator as soon as possible. Forms will then be supplied to the insured or the beneficiary (as appropriate) for completion. These, and proofs of loss or death, will be supplied to the insurance carrier, who will determine whether or not any benefit will be payable.

Method of Payment for Benefits:

Benefits which become payable under this Plan are normally paid as a lump sum payment. If requested, benefits can be paid in any form of payment available through the Prudential

Insurance Company of America. Interest Income, Equal Installments, and annuities are some of the forms of benefit payment available currently.

How to Appeal a Claim:

If you have questions about a claim payment or denial, you should write to the Plan Administrator who will forward your inquiry directly to the office of the Insurance Carrier which processed your claim. Continued problems or denials will be reviewed jointly by the Plan Administrator and the Insurance Carrier.

SHORT-TERM DISABILITY INCOME PLAN

Plan Name:

FRANKLIN MINT CORPORATION EMPLOYEES SHORT-TERM DISABILITY INCOME PLAN

Plan Number:

502

Employer Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Plan Administrator:

BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
(215) 459-6864

Agent for Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Administration of this Plan:

This plan is fully self-insured by Franklin Mint Corporation. Only those benefits described in the plan of benefits as listed here are payable under this plan. The plan is subject to review and revision by Franklin Mint Corporation.

Funding and Fiscal Year:

This plan is not funded in advance. Benefits are paid from the general assets of the Corporation. The plan is operated on a fiscal year of 1 January through 31 December.

Employees Covered by the Plan:

All full-time regular employees who are either:

- Located in the United States, or
- United States citizens and are expatriated to a foreign location are covered by the self-insured Short-Term Disability Income Plan.

However, if any of these employees are covered by a collective bargaining agreement, the terms of that agreement must include coverage by this plan in order for benefits to be payable. There is a waiting period of 60 days following the hire date for eligibility in this plan.

Plan Provisions:

The self-insured Short-Term Disability Income Plan provides eligible employees with income protection when they are unable to work due to a disabling injury or illness. Coverage

begins when an employee completes the waiting period and continues during employment. Coverages ceases on the day of termination.

Benefit Amount Payable:

This plan provides all eligible non-exempt employees with an amount equal to two-thirds of weekly base pay for a maximum period of 26 weeks.

This plan provides all eligible exempt employees with income protection for a maximum period of 26 weeks in the form of salary continuance as follows:

Calendar Years of Continuous Service	Salary Continuance	
	Full Pay	Half Pay
Up to 1 year	4 months	2 months
1 year to 3 years	5 months	1 month
Over 3 years	6 months	- none

When are Benefits Payable:

If you are unable to work due to a disabling injury or illness, the benefit amount is payable provided Franklin Mint Corporation's Medical Department receives written proof of the disability. Application forms for these benefits are available from the Medical Department. If disability keeps you out of work for more than 15 calendar days, additional documentation is required every 15 days.

Benefits of this plan are payable from the eighth calendar day of disability or on the first day of hospitalization, whichever occurs first.

Plan Limitations and Exclusions:

Short-Term Disability Income Plan benefits are not payable when the injury or illness is:

- A condition which keeps you out of work because of appearance only.
- A condition resulting from your use of drugs (stimulants,

narcotics, hallucinogenics, etc.), alcohol or other intoxicating agents. However, if your absence is due to confinement in a medical institution for treatment of alcoholism or drug addiction or abuse, benefits will become payable.

- A condition resulting from a self-inflicted injury, emotional problems, nervousness, or mental conditions. However, if you receive professional psychiatric care, benefits will become payable.
- A condition resulting from or contributed to by pregnancy.

Benefits of this plan are also not payable in cases where:

- Proper documentation of the nature of the illness or injury is not received in the Medical Department every 15 days.
- The documentation provided to the Medical Department indicates that you are malingering or failing to obtain appropriate medical treatment.
- Holiday and/or sick day payments are made for a day or days which otherwise would be covered under this plan. Short-Term Disability Income Plan benefits are offset by these payments.

Benefits of this plan are reduced in cases where:

- The absence is due to an occupational injury or illness. If you are receiving Workmen's Compensation payments, benefits under this plan will be limited to the difference between the amount payable by Workmen's Compensation and the normal benefits of this plan.
- The absence is covered by another company provided disability plan (for example New York State DBL benefits). If you are receiving other disability payments, benefits under this plan will be limited to the difference between the amount payable by the other plan and the normal benefits of this plan.

Procedure for Filing Claims:

Notice of any illness or injury which keeps you away from your job for more than three days should be given to the Medical Department as soon as possible. Forms will then be supplied to you for completion by your attending physician if it is anticipated that the absence will exceed seven calendar days or if you are to be hospitalized. The Medical Department will determine whether or not any benefit is payable after receiving the completed disability form.

Method of Payment for Benefits:

Benefits which become payable under this plan are paid on a weekly, bi-weekly, or monthly basis, depending on your pay cycle. Short-Term Disability monies are paid directly through our payroll system and are mailed to your home. Benefits are subject to Federal Income Tax according to the individual's withholding status. However, these benefits are exempt from Pennsylvania State Tax and Federal Insurance Contributions Act (FICA) payments.

How to Appeal a Claim:

If you have questions about a claim payment or denial, you should contact the Medical Department who will review the inquiry with the Plan Administrator. Continued problems or denials will be reviewed by a committee which consists of the Medical Director, the Chief Nurse, the Benefits Supervisor and the Director of Personnel.

Termination of Short Term Disability Plan Benefits:

Plan participation for eligible employees ceases on the date of termination of employment.

Conversion Privileges:

There are no conversion privileges for the Short-Term Disability Income Plan.

LONG-TERM DISABILITY INSURANCE

Plan Name:

FRANKLIN MINT CORPORATION
LONG-TERM DISABILITY INSURANCE PLAN

Plan Number:

501

Employer Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Insurance Carrier:

THE PRUDENTIAL INSURANCE CO. OF AMERICA
FORT WASHINGTON, PA. 19380

Plan Administrator:

BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
(215) 459-6864

Agent for Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Plan Administration:

This plan is fully insured. No benefit is payable under the plan which is not payable under the applicable insurance contract. The plan is subject to review and revision by either Franklin Mint Corporation or the insurance carrier.

Funding and Fiscal Year:

The funding method used for this plan is the insurance premium fully paid by Franklin Mint Corporation to the insurance carrier. The policy is renewed each year on 1 January.

Employees Covered by The Plan:

All full-time regular employees whose annual base earnings are at least $7,800 and who are either:

- Located in the United States or
- United States citizens and are expatriated to a foreign location are covered by the Long-Term Disability Insurance Plan.

However, if any of these employees are covered by a collective bargaining agreement, the terms of that agreement must include coverage by this Plan for the insurance to be in force.

There is a 60-day following hire date waiting period for eligibility in this plan.

Plan Provisions:

The Group Long-Term Disability Insurance Plan provides income protection benefits to eligible employees who:

- Due to sickness or injury, are unable to perform their jobs, and
- Have already exhausted 26 full weeks of benefit eligibility under the Short-Term Disability Plan.

Coverage begins when an employee completes the waiting period and continues during employment, and for 31 days following an effective date of termination.

Benefit Amount Payable:

The Long-Term Disability Insurance Plan guarantees eligible employees a monthly benefit equal to 60% of their basic earnings at the time the disability commenced. The guarantee means the Plan will assure that your total monthly income including benefits received from sources such as Social Security, Workmen's Compensation, and/or any State or Federal agency, will be 60% of your base salary rate at the time you were first unable to work.

EXAMPLE — At the time of disability, an eligible employee's base salary rate was $12,000 per year.

Assuming that the individual is entitled to a Social Security Disability Award of $155/mo.

60% x 12,000 = $7,200 annually or $600 monthly

Less Social Security Disability = *155* monthly Benefit

Long-Term Disability Insurance = $445 monthly Plan Benefit.

When Are Benefits Payable:

If you are unable to work for more than 26 weeks due to illness or injury, the benefit amount is payable on a monthly basis when written proof of the disabling condition is submitted to The Prudential Insurance Company by you and your attending physician. If you terminate employment with Franklin Mint Corporation or change to a classification of employment which is not covered by this Plan, coverage will cease in 31 days from that date.

Conversion Privilege:

There are no conversion privileges for Long-Term Disability Insurance.

Plan Limitations and Exclusions:

Limiting Age: Coverage under this Plan will cease when you reach the age of 65.

Benefits under this plan are not payable when the disability is caused by:

- Intentionally self-inflicted injuries.
- War or any act of war (war means declared or undeclared war, and includes resistance to armed aggression).

How Long are Benefits Payable:

Initially, benefits under the Long-Term Disability Insurance Plan are payable for 24 months (two years) while you are unable to perform the duties of your job. After two years, benefits will continue only if you are completely unable to engage in any and every gainful occupation for which you are reasonably fitted by education, training, or experience. No benefits under this Plan will continue beyond your 65th birthday month.

Procedure For Filing Claims:

If you have been absent from work for 20 weeks or more due to illness or injury, you should contact the Benefits Office in Personnel to request the Long-Term Disability Insurance Plan application forms. The forms require an employer statement, an employee statement, and a statement from the physician who is treating you. The forms are then returned to the Benefits Office where they will be processed on to the Insurance Carrier, who will make the final determination whether or not benefits are payable. You will also be requested to submit the Social Security Disability Award or Denial received from the Social Security Administration Office. Application for Social Security Benefits for disability can be made after 20 weeks of continuous disability.

Method of Payment for Benefits:

Monthly benefits which become payable under this Plan are paid by the 20th of each month. Checks will be forwarded by the Benefits Office on a regular basis to you at your home.

How to Appeal a Claim:

If you have questions about a claim payment or denial, you should write to the Plan Administrator who will direct your inquiry to the Insurance Carrier office which processed your claim. Continued problems or denials will be reviewed jointly by the Plan Administrator and the Insurance Carrier.

RETIREMENT PLAN

Plan Name:

FRANKLIN MINT CORPORATION
EMPLOYEES RETIREMENT PLAN

Plan Number:

001

Employer Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Plan Administrator:

EMPLOYEES RETIREMENT PLAN COMMITTEE
c/o BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
(215) 459-6864

Agent For Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Trustee:

GIRARD BANK TRUST DEPARTMENT
ACCOUNT 96382
GIRARD PLAZA
PHILADELPHIA, PA. 19101

Investment Manager:

FORSTMANN-LEFT ASSOCIATES
767 FIFTH AVENUE
NEW YORK, NY 10022

Administration of This Plan:

This plan is a defined contribution plan. The Internal Revenue Service has determined that the plan is qualified under Section 401 of the Internal Revenue Code. No benefit is payable under this plan which is not payable under the plan document as adopted by the company's Board of Directors. The plan is administered by a committee of nine employees appointed by the company's Board of Directors.

Current members of the Employees Retirement Plan Committee are:

- Martin F. Walsh, Chairman
- Gilbert C. Armstrong
- Michael C. Boyd
- David R. Dustin
- Frederic J. Hammerle
- Mary O. Kennedy
- RocLyne E. LaPorte
- Eleanore G. Murrison
- Peter J. Mastroianni

The company's board of Directors also appoints the investment manager who makes all investment decisions for the general fund and handles all investment transactions with the trustee.

Funding and Fiscal Year:

This plan is funded completely by the company. No contributions are permitted by employees. The company's annual contribution is calculated at six percent of eligible employees' base salaries. The plan is operated on a fiscal year of 1 January through 31 December.

Employees Covered by The Plan:

To be covered by this plan, a person must be employed by Franklin Mint Corporation or any subsidiary of the corporation which has adopted this plan and joined in the Trust Agreement.

The corporation and these companies are then designed as participating companies for plan purposes. Current participating companies are the corporation and its domestic subsidiaries.

The plan covers substantially all employees of these participating companies once eligibility requirements have been met. However, if an employee is covered by a collective bargaining agreement, the terms of the agreement must include coverage by this plan for participation to be effective.

Regular employees, full-time and part-time, become eligible to participate on the first day of the first full calendar quarter of employment.

Temporary employees become eligible to participate on the first day of the first full calendar quarter of employment after completing 1,000 hours of service.

Full calendar quarter beginning dates are 1 January, 1 April, 1 July, and 1 October.

Plan Provisions:

The Employees Retirement Plan provides income to you after retirement.

Employees of Franklin Mint Corporation are retired on the first or last day of the month during which their 65th birthday falls. Early retirement may be required by a participant who has reached age 55 and has completed ten or more years of service.

Benefits of this plan are also payable in the event of the death of a participant. If your employment is terminated for reasons other than retirement or death, some or all benefits of this plan would be payable if you had completed a minimum of four years of service. The proportion of the benefits payable increases with each year of service after four years.

Company Contributions:

All contributions to provide the benefits of the plan will be made by the company. The contributions are irrevocable and are made to the Trust Fund which has been established to hold all assets and earnings for the exclusive benefit of the participants or their beneficiaries. Participants are not allowed to make any contributions.

The amount of the annual contribution is equal to six percent of the total eligible base earnings for participants during the year. Eligible base earnings include payments made for regular hours worked, shift differential, sick days, vacation, holiday, death in the family absence, bonus days, jury duty absence, and military duty absence. Eligible base earnings do not include overtime pay, suggestion award payments, short-term disability payments, productivity sharing payments and regular salary payments made prior to the date of eligibility for participation.

Participant's Individual Accounts:

Contributions made to the Trust Fund by the Company are credited to individual participant's accounts. No individual account contribution may exceed $25,000 in any plan year. These contributions are collectively invested and managed by the Investment Manager. The contributions and the interest they earn each year form personal pension funds for each eligible participant.

Investment Option Elections:

The Plan provides an investment option to participants who are partially vested. If you have credit for at least four years of service by 31 December of any year, than for the following year, a choice of the type of investment for your retirement account is available. The choices for investment are:

GENERAL INVESTMENT ACCOUNT—Under this option, contributions made for you by the company are collectively

invested and managed by the Investment Manager. The performance of the fund fluctuates with the market value of the investments.

FUNDING ACCOUNT—Under this option, company contributions are put into a fund which guarantees a minimum interest rate. The Retirement Plan Trust has negotiated a contract with the Equitable Life Assurance Society of the United States through August, 1987. The contract interest rate is 8.15% less administrative expenses. Interest earned is automatically re-invested.

Participants who are eligible for this investment option must make their election in writing only during the month of October. Your decision will start on 1 January of the year following the election and will remain in effect for at least one year. Each year, in October, the election can be changed for the next Plan year. If an election is not changed, it will remain in effect indefinitely.

You can elect to have 100% of your retirement account monies in either the General Investment of Funding Account. Or, you can place 25%, 50%, or 75% of the money in the Funding Account and leave the remaining percentage in the General Investment Fund.

Forms for use in making an investment election are available from the Benefits Office in Personnel (215/459-6864). If you wish to make or change an investment election, you should request a form and return it to the Benefits Office no later than 31 October of the year prior to the year in which the election is to take effect.

Forms received in the Benefits Office after 31 October cannot be accepted and will be returned to you.

Normal Retirement:

Participants are scheduled to retire on the first or last day of the month in which their 65th birthday falls. The choice between the beginning or ending of the month is up to the participant.

Early Retirement:

Participants who are at least 55 years of age and have completed at least 10 years of service may request to retire on the first or last of any month after satisfying these two requirements.

Years of Service:

Under current government regulations, service after 1975 is defined in terms of hours. An hour of service means:

- Each hour for which an employee or temporary employee is paid, or entitled to payment, for the performance of duties
- Each hour for which an employee or temporary employee is paid, or entitled to payment for vacation, holiday, illness, disability, jury duty, military leave, or any approved leave of absence.
- Each hour for which back pay is awarded.
- Each hour for which an employee or temporary employee would have been scheduled on a straight time basis in any period of absence due to a layoff for reasons of an economic cutback for up to 90 days from such layoff.

In addition, any service with a Franklin Mint Corporation subsidiary which has not adopted this plan will also be considered in calculating your years of service.

Prior to 1976, you received credit for a year of service on your employment anniversary. Beginning in 1976, your service is measured by the credited hours during each anniversary year:

- If 1,000 hours of service or more are credited during an anniversary year, you receive credit for one year of service.

- If less than 1,000 hours of service are credited during an anniversary year, no year of service credit is made.
- If between 501 and 1,000 hours of service are credited, no break-in-service is incurred.
- If less than 501 hours of service are credited, a break-in-service is incurred.

Break-In Service:

A break-in-service is incurred when you are not credited with a minimum of 501 hours in any employment anniversary year.

A break-in-service can effect your right to recontribute any amounts paid out of the Plan if you again become eligible for participation in the plan. It can also effect your right to claim prior service credits if the number of those credits (i.e. years of service) is less than four and your consecutive breaks-in-service total three or more (see Section on Re-Employment Provisions).

Continuous Years of Service:

A participant's credit for continuous years of service is calculated by the number of years in which you have accumulated 1,000 hours. The only exception to this is when you terminate employment with less than four years service, and you incur three or more consecutive service breaks. No credit will be given for prior service (see Section on Re-Employment Provisions).

Vesting:

Participants who are credited with at least four years of service begin to "vest" in this plan. "Vesting" is a legally fixed right to possession. When you have credit for four years of service, you are 20% vested in our individual account. For additional years of service credit, our vesting increases 20% a year. Thus if you are credited with eight continuous years of service, you are fully vested in the amount of money accumulated in your retirement fund, including all annual contributions and any accrued interest.

The full vesting schedule for participants is specifically described in the schedule below:

Completed years of Service	Percent Vested
4 years, but less than 5	20%
5 years, but less than 6	40%
6 years, but less than 7	60%
7 years, but less than 8	80%
8 or more years	100%

This means, for instance, that if you leave the Company after four years of service you will receive 20% of your account value.

Re-Employment Provisions:

If a participant who terminated employment again becomes an employee eligible for participation in this plan, prior service and individual account values are effected as follows:

- If eligible re-employment occurs *before* a break-in service is incurred, then all prior service credits will be re-instated. If you were not vested at the time of termination, the total account value which was forfeited will be reinstated. If you were vested at the time of termination, and a lump-sum distribution was made to you, the amount of the account which was forfeited will be reinstated only if the amount which was paid out is re-contributed to the plan not later than one year after the date of the lump-sum distribution.
- If eligible re-employment occurs *after* a break-in-service is incurred, prior service credits will be re-instated if:
    - You again complete one year of service in the Plan, and
    - Before the break-in-service, you had a vested interest, and the number of consecutive breaks-in-service is less than four.

Retirement Benefits:

A participant who has reached his/her normal retirement date, or who has satisfied the requirements for early retirement and has requested retirement, will be retired and entitled to receive a benefit from this Plan.

The amount of the benefit available to you will be the total value of your individual account as of the last day of the calendar quarter preceding the retirement date, plus any contribution due based on eligible earnings from that calendar quarter date to the retirement date.

Normal Method of Payment:

The normal form of benefit payment is an annuity. Annuities pay you a fixed amount of money each month for life.

If you are single, the normal form of benefit payment is a Cash Refund Annuity. This means that you will receive a specified amount of money each month for the rest of your life. In the event you died before receiving the full cash value of the annuity, the balance of the retirement account value would be paid to the named beneficiary you designated.

If you are married, the normal form of benefit payment is a Qualified Joint and Survivor Annuity. This means that you will receive a specified amount of money each month for the rest of your life, and if you would die before your spouse, your spouse would receive 50% of that specified amount for the rest of his or her life. In the event that both you and your spouse died before receiving the full cash value of the annuity, the balance of the retirement account value would be paid to the named beneficiary.

Optional Methods of Payment:

There are other forms of benefit payments available. You may select any of the alternate forms by indicating your choice in writing at least 30 days before retiring. No notice to the Benefits Office is required if you wish the normal form of payment.

Other forms of payment are listed below:

- Qualified Joint and Survivor Annuity (as described in the normal method of payment, (with a monthly survivor's benefit equal to 66⅔%, 75%, or 100% of the adjusted pension.
- Lump-Sum Payment.
- Quarterly Installations for a period not to exceed ten years.
- Any other form of annuity approved by the Plan Committee.

Death Benefits:

If you should die while participating in the Plan, the total value of your retirement account will be paid to the named beneficiary you designated.

Beneficiary Designation:

You are required to make a beneficiary designation in writing for plan benefits. In addition to designating the person (or persons) who is to receive the proceeds from this plan, you must also choose the method of payment.

New employees are given this beneficiary form to complete on the date of hire.

Beneficiary forms are available from the Personnel Department. Changes in beneficiary designation can be made at any time by completing a new form and forwarding it to the Benefits Office.

Termination Benefits:

If the employment of a participant is terminated for any reason other than death or retirement, a benefit of this plan may be payable.

Participants who, at the time of termination, have completed less than four years of service, forfeit their full account values. No benefit is due and they are terminated from Plan participation.

Participants who, at the time of termination, have completed four or more years of service, will be entitled to a benefit equal to the percentage of their total account in which they are vested:

4 years of service but less than 5	— 20% vested
5 years of service but less than 6	— 40% vested
6 years of service but less than 7	— 60% vested
7 years of service but less than 8	— 80% vested
8 years of service or more	— 100% vested

If the amount of the benefit due it $1,750 or less, payment of money will be made in a single lump sum payment within three months of the date of termination. If the amount of the benefit due is more than $1,750, you will be advised in writing of the amount of the benefit and will be given a choice to take the money in a lump sum payment or to leave the money in the Fund until age 65 (or age 55 if you had completed 10 years of service). You must make this election in writing and return it to the Benefits Office. If you elect a lump sum distribution, payment will be made within three months of the later of the date of termination or receipt of the written election.

For purposes of determining vested benefits for participants who have been laid off due to an economic cutback, the date of termination will be 90 days after the date of layoff. If you had not been recalled to work, and you have completed at least four years of service, any benefit payable may be paid within the 90 days following the date of termination irrespective of whether you are later recalled.

Forfeitures:

Any amount forfeited in accordance with this Plan will be applied to reduce the amount of the current or next succeeding contribution to the plan.

Withdrawals:

No withdrawals of individual account values during employment is allowed.

Rights to Benefits:

Plan benefits are intended only for you, and for your spouse or beneficiary. They cannot be assigned, attached, or seized by any creditors.

Future of the Plan:

Franklin Mint Corporation intends to continue the Retirement Plan and make its contributions regularly each year. However, it reserves the right to amend or end the Plan at its discretion. If the Plan is terminated or contributions completely discontinued, participants will become vested in their full proportionate share of the Fund. The Retirement Plan Committee would be responsible to determine the form of payment in the event of Plan termination.

Compliance with Government Regulations:

The Internal Revenue Service has determined that this Plan is qualified. Franklin Mint Corporation reserves the right to amend the Plan to comply with any future regulations.

Claiming Retirement Benefits:

No application for retirement benefits is necessary. Prior to normal retirement, you will receive written notice from the Benefits Office informing you of the amount and forms of benefit available.

Appealing a Claim:

If a claim for benefits is denied by the Retirement Plan Committee, either in whole or in part, the Committee will notify the participant or the beneficiary in writing of the reason for the denial with specific reference to the provisions of the Plan upon which the denial is based and a description of any additional material or information denying the claim, and an explanation of the claim review procedures.

The participant or beneficiary whose claim has been denied may, within 30 days after receipt of the written denial, appeal

the decision by delivering to the Benefits Office a written request for a review of the denial.

Within 60 days following the receipt of such a review request, the Committee will forward a written notice of the decision on the review, including specific references to the provisions of the Plan upon which the decision was based.

Plan Documents:

This summary of the Retirement Plan describes only the highlights of this benefit program, and does not attempt to cover all its details. The official Franklin Mint Corporation Employees Retirement Plan document and Trust Agreement which legally govern the operation of the Plan are available for review through the Personnel Department during normal working hours. If you wish to look at these documents, contact the Benefits Office (215/459-6864). For those whose work location is other than Franklin Center, copies of the documents are available in all other locations. The Benefits Office can arrange for the documents to be reviewed.

Copies of any of these documents will be furnished to any Plan participant or beneficiary within 30 days at a charge of five cents per page, upon written request.

Each year all employees will receive a Summary Annual Report of the Plan. These reports highlight the annual financial condition of the Plan.

BUSINESS TRAVEL ACCIDENT INSURANCE

Plan Name:

BUSINESS TRAVEL ACCIDENT INSURANCE PLAN

Plan Number:

503

Employee Identification Number:

231647880

Plan Sponsor:

FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Insurance Carrier:

CONTINENTAL CASUALTY COMPANY
HOME OFFICE: CHICAGO, ILLINOIS

Policy Number:

SR 68050554

Plan Administrator:

BENEFITS OFFICE
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091
A/C 215/459-6864

Agent for Service of Legal Process:

THE PLAN ADMINISTRATOR (As Listed Above)
OR
LEGAL DEPARTMENT
FRANKLIN MINT CORPORATION
FRANKLIN CENTER, PA. 19091

Administration of this Plan:

This Plan is fully insured. Only those benefits described in the applicable insurance contract are payable under the plan. The Plan is subject to review and revision by either Franklin Mint Corporation or the Insurance Carrier.

Funding and Fiscal Year:

The funding method used for this Plan is insurance premium paid entirely by Franklin Mint Corporation to the Insurance Carrier. The policy is renewed every three years starting on the 27th of January, 1976.

Employees Covered by the Plan:

All active full-time officers and employees of the Company under the age of 70 years are covered by the plan. There is no waiting period for eligibility.

Plan Provisions:

The Business Travel Accident Plan provides life and dismemberment benefits to eligible persons traveling on company business (excluding daily travel to and from work and bona fide vacations). Coverage starts when you leave your home or office (whichever you leave last) to go on a business trip for Franklin Mint Corporation, and continues until you return to your home or office (whichever occurs first).

Benefit Amounts Payable:

The amount payable, called the Principal Sum, is ten times your basic annual earnings (exclusive of overtime or bonuses) and is subject to a maximum of $500,000. The Principal Sum or portions of it are payable according to the following schedule (note that only one benefit — the largest — is payable as the result of any one accident):

- Loss of Life, or two or more members. Principal Sum
- Loss of One Member . . . One-half of the Principal Sum

Members are your hands, feet, and eyes. Loss of a member means complete severance through or above the ankle or wrist, or the irrevocable loss of the entire sight of an eye.

Policy Limit:

Several Franklin Mint employees could be involved together in an accident. An aggregate (i.e. overall) limit of benefits of $2,500,000 will be payable as the result of any single accident. If the total benefits payable would exceed that amount, the claimants will share the benefits in proportional amounts.

When are Benefits Payable:

Business Travel Accident Insurance Plan benefits are payable when an accident occurs which meets all of the following qualifications:

- It occurs while you are eligible under the Plan
- It causes you bodily injury which results in a loss covered by the Plan
- It causes a loss directly and independently of any other cause not related to the accident
- It occurs while you are traveling on the business of Franklin Mint Corporation in order to carry out duties assigned to you by Franklin Mint Corporation.

Plan Limitations and Exclusions:

- Commuting (that is normal travel between your home and work)
- Vacation time, even if combined with a trip which otherwise falls under the Plan
- Service in the armed forces
- Suicide or self-inflicted injuries
- Illness, disease, pregnancy, child-birth or miscarriage, or any bacterial infection except as a result of an accidental cut or wound

- Acts of war occurring within war zones (described as Vietnam, Laos, Cambodia or the United States, (these war zones may change from time to time
- Operating, learning to operate or acting as a member of the crew of any aircraft
- Riding in a aircraft other than those having a current and valid Airworthiness Certificate and piloted by a person who then holds a valid and current certificate of competency
- Travel or flight beyond the earth's atmosphere, or in any aircraft owned, or operated by Franklin Mint.
- Aerial navigation for other than transportation purposes.

Your Beneficiary:

Loss-of-member benefits are payable directly to you.

Unless you submit in writing a specific beneficiary for this Plan to the Plan Administrator, loss-of-life benefits will be paid to the person designated as beneficiary to your group life insurance benefits. If neither of these apply, proceeds of this insurance will go to your estate. If you wish to assign the benefits of this policy to a specific person or trust, please contact the Benefits Office.

Procedure for Filing Claims:

Notice of any loss thought to be covered by this Plan should be given to the Plan Administrator as soon as possible after the accident. Forms will then be supplied to the employer or the beneficiary (as appropriate) for completion. These, and proofs of loss, must be supplied to the Insurance Carrier, who will determine whether or not any benefit will be payable.

How To Appeal a Claim:

If you have any questions about a claim payment or denial, you should write to the office of the Insurance Carrier which processed your claim; continued problems or denials should be reported to the Plan Administrator.

Productivity Sharing Plan:

Franklin Mint Corporation recognizes the importance of individual contributions to the overall success of the company by sharing the financial rewards of our productivity with all regular employees not covered by a collective bargaining agreement. The Productivity Sharing Plan was established by our corporate Board of Directors to give employees a direct financial interest in improving the company's productivity. The Plan is reviewed annually and is subject to amendment as the Board deems necessary. It is not covered by ERISA.

Plan Provisions:

The Productivity Sharing Plan provides cash payments to eligible employees each December and April, based on the "units' you have credited to your employment. The total amount of money distributed to all eligible employees is equal to 25% of the company's net after-tax earnings for the year.

Eligible Employees:

All regular employees who are not covered by a collective bargaining agreement are eligible to participate in the Productivity Sharing Plan. Participation in the Plan allows an employee to accumulate "units". In order to receive payments, the employee must have units credited as of 31 December of the year for which the payment is being made, and:

- For the December payment: be on the payroll on 1 December, or be on lay-off status for less than 90 days.
- For the April payment: be on the payroll on the day of the payout, or be on lay-off status for less than 90 days prior to the day of the payout, or be on lay-off status for less than 90 days prior to 31 December and have units credited for all quarters of the year for which the payment is being made.

For Productivity Sharing Plan purposes, a lay-off is due to an economic cutback, and allows a person the right to recall.

How to Accumulate Units:

Full and part-time regular employees are eligible to begin accumulating units in the Plan begining with the first day of the first full calendar quarter of their employment. Calendar quarters begin with 1 January, 1 April, 1 July, and 1 October. For each $300 in base earnings (including shift differential but not overtime) you are paid, you receive credit for one unit in the Productivity Sharing Plan. Each calendar quarter, all eligible employees receive a certificate showing the number of units they have accumulated during the quarter.

Each quarter, the units are added together. The total number of units held by you on 31 December is the number of units used to calculate the cash payment due. Units will continue to be added together for a full five years (20 quarters). At the end of five years, you will receive credit for those units which you have earned in the most recent five years, and previous years will no longer be counted.

December Payment:

The company's productivity gains for a given year are not known in exact figure until the account books have been closed and audited, usually in March or April of the following year. However, in order to provide you with extra cash at Christmas time, the company estimates what the year-end figures will be, and pays out half the money at that time. Also, since you have not at this time received your final pay for the year, we estimate your total units as a year-end. Based on those estimates, the total estimated number of units is divided into the total estimated productivity sharing pot to determine an estimated dollar value for each unit. This estimated value per unit is divided in half, and that amount is paid for each estimated unit a person holds. The number of units held by you multiplied by half the estimated value per unit is the gross amount of the payment you will receive.

April Payment:

In April, after the books have been closed and audited, the actual productivity gains of the company are known. by then, eligible employees have also been given their certificate telling them exactly how many units they earned as of the previous 31 December. Based on final and audited figures, the total number of units held by all eligible employees is divided into the total productivity sharing pot. We now have determined the actual value for each units. The number of units held by you is multiplied by the actual value determined, and from that we subtract the amount paid in December. The remaining amount is the gross amount of the payment you will receive.

Productivity Sharing Checks:

All Productivity Sharing payments are included in your annual W-2 statement for tax reporting purposes. Franklin Mint Corporation holds a flat rate of 20% from all Productivity Sharing payments for federal withholding tax. Also held from each check will be applicable Social Security Tax (Federal Contributions Act Insurance), State tax, and local tax.

Educational Loan Program:

Franklin Mint Corporation provides a program of interest-free educational loans in order to encourage employees to acquire knowledge which would help them in the performance of their present jobs or train them for advancement within the Company.

Eligible requirements for participation in this program are:

- You must be a full-time, regular employee
- You must have completed at least six full months of continuous service at the time the course begins.
- You must show the potential for growth and development within Franklin Mint Corporation
- Courses taken must be job-related or related to a potential future position within your job family grouping.

Courses which are not job-related, but which are required for the completion of a degree, will be considered provided the degree being sought is related to your present or potential field of work with Franklin Mint Corporation.

- Courses taken must be given by an approved institution.
- No more than three courses per academic term will be considered for any employee
- Educational expenses paid by the Veteran's Educational Assistance Program will not be duplicated.

Approval of Educational Loan Application:

If you wish to participate in the Educational Loan Program, you are required to complete an application form which can be obtained from the Personnel Office. After completing the form, obtain your supervisor's signature approving the application, and foward the form to the Manager of Employee Relations in Personnel. Final approval of your eligibility and the determination whether or not the course you wish to take qualifies for the program is the responsibility of this Personnel officer.

Educational Gift Matching Program:

The Educational Gift Matching Program provides that Franklin Mint Corporation will make a contribution to any eligible educational institution in an amount equal to a contribution made to the school by a Franklin Mint employees.

Requirements for participation in this program are:

- At the time of your contribution, you must be a regular full or part-time employee or a retiree of Franklin Mint Corporation.
- The contribution must be your personal gift actually paid, not pledged, to the eligible institution.
- Eligible institutions include:
  - Private college preparatory schools providing secondary education

- Two-year colleges, four-year degree granting colleges and universities.
- Schools of nursing accredited by The National League of Nursing
- Technical institutes accredited by The Engineer's Council for Professional Development
- Art schools accredited by The National Association of Schools of Art
- Mechanical trade or technical schools accredited by The National Association of Trade and Technical Schools.
- An alumni fund, foundation, or association is eligible to receive contributions under this program only if it is an integral part of the school or certified to transmit all contributions received directly to the school, and it must be recognized by the Internal Revenue Service as an organization to which contributions are deductible by donors for income tax purposes.

- This program will not match dues, subscription fees, or insurance premiums paid to an eligible institution.
- The total contribution of Franklin Mint Corporation matching the contributions of any eligible individual will not exceed $1,000 in any calendar year.
- The contributions of this program must be used by the institution to foster the primary needs and objectives of an educational institution.

If you which to participate in the Educational Gift Matching Program, you are required to complete an application form which can be obtained from the Personnel office. Portions of the application must be forwarded to the educational institution along with the contribution. The other part of the form is to be returned to Personnel. When the school acknowledges receipt of the gift to the Personnel Department, Franklin Mint Corporation will forward its matching gift to the school.

Final determination of your eligibility and whether or not the institution qualifies to receive monies under this program is the responsibility of the Personnel Department.

§ 185. Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Jurisdiction

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

Service of process

(d) The service of summons, subpena, or other legal process of any court of the United States upon an officer or agent of

a labor organization, in his capacity as such, shall constitute service upon the labor organization.

Determination of question of agency

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * *

§ 1001a. Additional Congressional findings and declaration of policy

Notes of Decisions

1. Constitutionality

Imposition of liability on every withdrawal by employer was logical and equitable way to approach problem to which Multiemployer Pension Plan Amendments Act was addressed, and congressional scheme could not be said to be arbitrary or irrational, nor could Act be said to be objectionable as assessing an amount not rationally connected to actual cost of funding pension benefits, and, under minimal scrutiny standard, the Act was constitutional, even as applied to an involuntary withdrawal. Keith Fulton & Sons, Inc. v. New England Teamsters and Trucking Industry Pension Fund, C.A. Mass. 1984, 762 F.2d 1124, on rehearing 762 F.2d 1137.

* * *

§1001b. Additional Congressional findings and declaration of policy; single-employer plan termination insurance system

(a) Findings

The Congress finds that—

(1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;

(2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;

(3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and

(4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

(b) Additional findings

The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

(1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

(2) is desirable to provice for the transfer of liabilities to the termination insurance system only in cases of severe hardship;

(3) is necessary to maintain the premium costs of such system at a reasonable level; and

(4) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

(c) Declaration of policy

It is hereby declared to be the policy of this title—

(1) to foster and facilitate interstate commerce;

(2) to encourage the maintenance and growth of single-employer defined benefit pension plans;

(3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;

(4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;

(5) to maintain the premium costs of such system at a reasonable level; and

(6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

* * *

§1002. Definitions

For purposes of this subchapter:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean any

plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program—

(i) provides retirement income to employees, or

(ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

(B) The Secretary may by regulation prescribe rules consistent with the standards and purposes of this chapter providing one or more exempt categories under which—

(i) severance pay arrangements, and

(ii) supplemental retirement income payments, under which the pension benefits of retirees or their beneficiaries are supplemented to take into account some portion or all of the increases in the cost of living (as determined by the Secretary of Labor) since retirement,

shall, for purposes of this subchapter, be treated as welfare plans rather than pension plans. In the case of any arrangement or payment a principal effect of which is the evasion of the standards or purposes of this chapter applicable to pension plans, such arrangement or payment shall be treated as a pension plan.

* * *

§1051. Coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of Title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of Title 26;

(4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of Title 26 and which does not at any time after September 2, 1974, provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of Title 26;

(6) an individual retirement account or annuity described in section 408 of Tile 26, or a retirement bond described in section 409 of Title 26; or[1]

(7) an excess benefit plan.[2]

(8) Any [3] plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

* * *

§1052. Minimum participation standards

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of

service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 3 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "3 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) of Title 26) by an employer which is exempt from tax under section 501(a) of Title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age, unless—

(A) the plan is a—

(i) defined benefit plan, or

(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.

(3)(A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this

paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

> (A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or
>
> (B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4) all years of service with the employer or employers

maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under the plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4)(A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 1053(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term "year" means the period used in computations pursuant to subsection (a)(3)(A) of this section.

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

(Pub.L. 93—406, Title I, §202, Sept. 2, 1974, 88 Stat. 853; Pub.L. 98—397, Title I, §102(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1426, 1427.)

* * *

§ 1053. Minimum vesting standards

(a) Nonforfeitability requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) a plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraphs (A), (B), or (C).

(A) A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5

years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

(C)(i) A plan satisfies the requirements of this subparagraph if a participant who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

If years of service equal or exceed—	and sum of age and service equals or exceeds—	then the nonforfeitable percentage is—
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100

(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any participant who has completed at

least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title.)

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed."

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(e)(8) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at

least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054 (c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the

Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) **Cross Reference**

For nonforfeitably[1] where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.

(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(I) the plan is amended to reduce benefits under section 1425 or 1441 of this title, or

(II) benefit payments under the plan may be suspended under section 1426 or 1441 of this title.

(b) Computation of period of service

(I) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

---

1. So in original. Probably should be "nonforfeitability.

(A) years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2) of this section, the plan may not disregard any such year of service during which the employee was a participant;

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,[2]

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of such employer from the plan (within the meaning of section 1383 of this title), or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 1385(b)(2)(A)(i) of this title in connection with the

---

2. So in original. The comma should probably be a semicolon.

decertification of the collective bargaining representative; and

(ii) with any employer under the plan after the termination date of the plan under section 1348 of this title.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) for purposes of this section, the term "hour of service" has the meaning provided by section 1052(a)(3)(C) of this title.

(C) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as determined under regulations of the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(3)(A) For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other '12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining

the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D)(i) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E)(i) In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (2).

(v) A plan may provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(4) **Cross references**

(A) For definitions of "accrued benefit" and "normal retirement age", see sections 1002(23) and (24) of this title.

(B) For effect of certain cash out distributions, see section 1054(d)(1) of this title.

(c) Plan amendments altering vesting schedule

(1)(A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) of this section unless each participant having not less than 5 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) of this section shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of Title 26.

(3)(A) The requirements of subsection (a)(2) of this section shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

(B) For purposes of subparagraph (A) if—

(i) any contributions are made on behalf of a participant with respect to any plan year, and

(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with respect to such plan year.

(C) For purposes of this part, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived form the contributions for each plan year.

(d) Nonforfeitable benefits after lesser period and in greater amounts than required

A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

(e) Consent for distribution; present value; covered distributions

(1) If the present value of any vested accrued benefit exceeds $3,500, a pension plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2)(A) For purposes of paragraph (1), the present value shall be calculated—

(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause

(II) be less than $25,000.

(B) Applicable interest rate.—For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(3) This subsection shall not apply to any distribution of dividends to which section 404(k) of Title 26 applies.

(Pub.L. 93-406, Title I, §203, Sept. 2, 1974, 88 Stat. 854; Pub.L. 96-364, Title III, §303, Sept. 26, 1980, 94 Stat. 1292; Pub.L. 98-397, Title I, §§102(b), (c), (d)(2), (e)(2), 105(a), Aug. 23, 1984, 98 Stat. 1426-1428, 1436; Pub.L. 99-514, Title XI, §1139(c)(1), Title XVIII, §1898(a)(1)(B), (4)(B)(i), (d)(1)(B), (2)(B), Oct. 22, 1986, 100 Stat. 2487, 2942, 2944, 2955)

Amendment of subsec. (a)(2)

Pub.L. 99-514, Title XI, §1113(e)(1), (e), Oct. 22, 1986, 100 Stat. 2447, 2448, provided that, applicable to plan years beginning after December 31, 1988, with special rules with regard to plans maintained pursuant to collective bargaining agreements ratified before March 1, 1986, and with regard to employees who do not have 1 hour of service in any plan year to which the amendments apply, subsec. (a)(2) of this section is amended to read as follows:

"(2) A plan satisfies the requirements of this paragraph if it satisfies the following requirements of subparagraph (A), (B), or (C).

"(A) A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

"(B) A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a

percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:	*The nonforfeitable percentage is:*
3	*.20*
4	*.40*
5	*.60*
6	*.80*
7 or more	*100.*

"(C) A plan satisfies the requirements of this subparagraph if—

"(i) the plan is a multiemployer plan (within the meaning of section 3(37)), and

"(ii) under the plan—

"(I) an employee who is covered pursuant to a collective bargaining agreement described in section 414(f)(1)(B) and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

"(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I)."

Amendment of subsec. (c)(1)(B)

Pub.L. 99-514, Title XI, §1113(e)(4)(A), (e), Oct. 22, 1986, 100 stat. 2448, provided that, applicable to plan years beginning after December 31, 1988, with special rules with regard to plans maintained pursuant to collective bargaining agreements ratified before March 1, 1986, and with regard to employees who do not have 1 hour of service in any plan to which the amendment applies, subsec. (c)(1)(B) of this section is amended by striking out "5 years" and inserting in lieu thereof "3 years".

Repeal of subsec. (c)(3)

Pub.L. 99-514, Title XI, §1113(e)(2), (e), Oct. 22, 1986, 100 Stat. 2448, provided that, applicable to plan years beginning after December 31, 1988, with special rules with regard to plans maintained pursuant to collective bargaining agreements ratified before March 1, 1986, and with regard to employees who do not have 1 hour of service in any plan year to which the amendment applies, subsec. (c)(3) of this section is repealed.

* * *

§ 1054. Benefit accrual requirements

(a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(2) of this section, and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1) of this section.

(b) Enumeration of plan requirements

(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 8 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33⅓ of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in

excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133⅓ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under

the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), or (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 1052(a)(3)(A) of this title.

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan—

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [42 U.S.C.A. § 401 et esq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(2) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(3)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b)

of this title, determined without regard to section 1052(b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a claendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(c) Employee's accrued benefits derived from employer and employee contributions

(1) For purposes of this section and section 1053 of this title an employee's accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the

accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B)(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee's accumulated contributions multiplied by the appropriate conversion factor.

(ii) For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of The Treasury or his delegate.

(C) For purposes of this subsection, the term "accumulated contributions" means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compunded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.

For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B), the rate of interest described in clause (iii) of subparagaph (C), or both, from time to time as he may deem necessary. The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(E) The accrued benefit derived from employee contributions shall not exceed the greater of—

(i) the employee's accrued benefit under the plan, or

(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than a annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

(d) Employee service which may be disregarded in determining employee's secured benefits under plan

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(a) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $3,500) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) of this section unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) of this section with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

(1) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(2) resumes employment covered under the plan, and

(3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) of this section.

The plan provision required under this subsection may provide that such repayment must be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(f) Employer treated as maintaining plan

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any—

(A) tax credit employee stock ownership plan (as defined in section 409(a) of Title 26), or

(B) employee stock ownership plan (as defined in section 4975(e)(7) of such Code),

shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(h) Notice of significant reduction in benefit accruals

(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effecive date, to—

(A) each participant in the plan,

(B) each beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title), and

(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in subparagraph (A), (B), or (C).

(2) A plan is described in this paragraph if such plan is—

(A) a defined benefit plan, or

(B) an individual account plan which is subject to the funding standards of section 302.

(i) Cross reference

For special rules relating to class year plans and plan provisions adopted to preclude discrimination, see sections 1053(c)(2) and (3) of this title.

(Pub.L. 93-406, Title I, §204, Sept. 2, 1974, 88 Stat. 858; Pub.L. 98-397, Title I, §§102(e)(3), (f), 105(b), Title III, §301(a)(2), Aug. 23, 1984, 98 Stat. 1429, 1436, 1451; Pub.L. 99-272, Title XI, §11006(a), Apr. 7, 1986, 100 Stat. 243; Pub.L. 99-514, Title XVIII, §§1879(u)(1), 1898(a)(4)(B)(ii), (f)(1)(B), (2), Oct. 22, 1986, 100 Stat. 2913, 2944, 2956.)

—Amendment of Subsection (a)

Pub.L. 99-509, Title IX, §§9202(a)(1), 9204(a), Oct. 21, 1986, 100 Stat. 1975, 1979, provided that applicable with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year, and applying a special rule for collectively bargained plans, subsec. (a) is amended to read as follows:

"(a) Each pension plan shall satisfy the requirements of subsection (b)(3) of this section, and—

"(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1) of this section; and

"(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2) of this section."

Addition of Subsection (b)(1)(H)

Pub.L. 99-509, Title IX, §§9202(a)(2), 9204(a), Oct. 21, 1986, 100 Stat. 1975, 1979, provided that applicable with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, subsec. (b)(1) is amended by adding at the end thereof the following new subparagraph:

"(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

"(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

"(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

"(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be

treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

"(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

"(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of Title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

"(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of Title 26 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H)."

Amendment of Subsection (b)(2), (3), and (4)

Pub.L. 99-509, Title IX, §§9202(a)(3), 9204(a), Oct. 21, 1986, 100 Stat. 1976, 1979, provided that applicable with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, subsec. (b) is further amended—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph;

"(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

"(B) Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of Title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of the Internal Revenue Code of 1986.

"(C) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely becasuse the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

"(D) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (C) and (D) of section 411(b)(2) of Title 26 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2)."

Amendment of subsec. (i)

Pub.L. 99-514, Title XI, §1113(e)(4)(B), (e), Oct. 22, 1986, 100 Stat. 2448, provided that, applicable to plan years beginning after December 31, 1988, with special rules with regard to plans maintained pursuant to collective bargaining agreements ratified before March 1, 1986, and with regard to employees who do not have 1 hour of service in any plan year to which the amendment applies, subsec. (i) of this section is amended to read as follows:

(i) Cross reference.—

For special rules relating to plan provisions adopted to preclude discrimination, see section 1053(c)(2) of this title.

* * *

§1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualifed preretirement survivors annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2) of this section, to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of Title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of Title 26),

subsection (a) of this section shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of Title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(3)[1] This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a

plan described in section 404(c) of the Internal Revenue Code of 1986 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(3)[1] A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waiver the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

(V) A reasonable period after separation from service in case of a participant who separates before attaining age 35.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivior annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such act.

(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(d) "Qualified and joint survivor annuity" defined

For purposes of this section, the term "qualified joint and survivor annuity" means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) "Qualified preretirement survivor annuity" defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit.

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of $25,000, and

(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than $25,000.

(B) For purposes of subparagraph (A), the term "applicable interest rate" means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(h) Definitions

For purposes of this section—

(1) the term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant's accrued benefit,

(2)(A) The term "annuity starting date" means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shal be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) the term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant's accrued benefit as security for loan as not preventing distribution

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), of this section, nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) of this section (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) of this section are met.

(l) Regulations; consultations of Secretaries of Treasury and Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(Pub.L. 93-406, Title I, §205, Sept. 2, 1974, 88 Stat. 862; Pub.L 98-397, Title I, §103(a), Aug. 23, 1984, 98 Stat. 1429; Pub.L. 99-514, Title XI, §§1139(c)(2), 1145(b), Title XVIII, §§1898(b)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B), Oct. 22, 1986, 100 Stat. 2488; 2491; 2945-2951.)

§ 1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

(1) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement

benefit, but separated from the service (with any nonforfietable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937

If—

> (1) a participant or beneficiary is receiving benefits under a pension plan, or (2) a participant is separated from the service and has nonforfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [42 U.S.C.A. § 401 et seq.] or the Railroad Retirement Act of 1937 [45 U.S.C.A. § 231 et seq.], or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant or any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit

is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment of allenation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 of Title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of Title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that parargraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payees' right to, or assignes to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and (iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another

alternate payee under another order previously determined to be a qualifed domestic relations order.

(E)(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualifed domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of

section 1055 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes) of this title, and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administraor shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) Shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of

competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amount") which would have been payable to the alternate payee during such period if the order has been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within 18-month period described in clause (v)

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made

pursuant to such act.

(J) A person who is an alternate payee under a qualified relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualifed domestic relations order shall not be treated as garnishment for purposes of section 303(a) of the Consumer Credit Protection Act.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(Pub.L. 93-406, Title I, § 206, Sept. 2, 1974, 88 Stat. 864; Pub.L. 98-397, Title I, § 104(a), Aug. 23, 1984, 98 Stat. 1433; Pub.L. 99-514, Title XVIII, § 1898(c)(2)(B), (4)(B), (5), (6)(B), (7)(B), 100 Stat. 2952-2954.

* * *

§1057. Temporary variances from certain vesting requirements

In the case of any plan maintained on January 1, 1974, if, not later than 2 years after September 2, 1974, the administrator petitions the Secretary, the Secretary may prescribe an alternate method which shall be treated as satisfying the requirements of section 1053(a)(2) or 1054(b)(1) (other than subparagraph (D) thereof) of this title or both for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that—

(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation.

(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

(3) a waiver or extension of time granted under section 1083 or 1084 of this title would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the administrator petitions the Secretary for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.
(Pub.L. 93-406, Title I, §207, Sept. 2, 1974, 88 Stat. 865.)

* * *

§1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which subchapter III of this chapter applies.

(Pub.L. 93-406, Title I, §208, Sept. 2, 1974, 88 Stat. 865; Pub.L.

96-3674, Title IV, §402(b)(1), SEpt. 26, 1980, 94 Stat. 1299.)

* * *

§1059. Recordkeeping and reporting requirements

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a) of this section, to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of $10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.
(Pub.L. 93-406, Title I, §209, Sept. 2, 1974, 88 Stat. 865.)

* * *

§1060. Multiple employer plans

(a) Plan maintained by more than one employer

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer

For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent

provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of Title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of Title 26) shall be treated s employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) Plan of trades or businesses under common control

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c) of this section.

(Pub.L. 93-406, Title I, §210, Sept. 2, 1974, 88 Stat. 866.)

* * *

§1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d) of this section, sections 1055, 1056(d), and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) of this section in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

* * *

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c) of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under sections 1052, 1053, and 1054 of this title.

[See main volume for text of (2) and (3); (d) and (e)]

(As amended Pub.L. 99-272, Title XI, §11015(a)(1)(B), Apr. 7, 1986, 100 Stat. 265.)

* * *

(2) For purposes of paragraph (1), the term "supplementary or special plan provision" means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1954 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable

benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.
(Pub.L. 93-406, Title I, §211, Sept. 2, 1974, 88 Stat. 867.)

* * *

§1291. Final decisions of district courts

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, §48, 65 Stat. 726; July 7, 1958, Pub.L. 85-508, §12(e), 72 Stat. 348.

* * *

§1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000 computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court

may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. June 25, 1948, c. 646, 62 Stat. 930; July 25, 1958, Pub.L. 85-554, §1, 72 Stat. 415.

* * *

§1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction.

June 25, 1948, c. 646, 62 Stat. 937.